

In Cane'

John Penn, Thomas Penn, and Richard Penn, Esqrs.

Plaintiffs.

Charles Calvert Esq; Lord Baltimore in the Kingdom of Ireland,

Defendant.

The Plaintiffs Case.

A Verbal Description
of the Map.

Map.

The Peninsula.

Its Boundaries,
On both sides.Three different Boundaries,
on the East side.Part of the Lower
Counties are on the
East side of it.Part of Maryland
is on the West Side of
it.

As to the Isthmus.

As to the Degree of
Northern Latitude.

About the Degrees.

Where Delaware
Bay Ends.Where Delaware
Bay begins.

Old Cape Henlopen.

THE only difficult Task therein is to speak the Map, or to describe, in Words, clearly and distinctly, the Peninsula, often mentioned in the Pleadings; in which Peninsula some Part of the three Lower Counties of *Newcastle*, *Kent* and *Suffolk*, and also one of the two Parts whereof the Province of *Maryland* consists, do lie.

When once the Situation, the Boundaries, the Extent, the Isthmus, and some few particular Places about that Peninsula, are clearly described and comprehended, the Cause will, then, fall into a Method, which may be readily understood by any Person.

To proceed therefore, In *America* there is an exceeding long Peninsula, or narrow Neck of Land, which thrusts it self out from the Main Continent, lying on the North Part, into the Atlantic or Western Ocean, on the South Part;

This Peninsula is at least 150 Miles long, from the North to the South.

To stand (suppose, in the Sea) at the South End of that Peninsula, and to look from thence up the Peninsula, to the North (which is the way that we look at it, in any Map) the Southern Point or End of this Peninsula is in the main Western Ocean; the Western Side of it has but one single Boundary only, quite up to the Head of the Peninsula, that is, the Bay of *Chesapeake*; but, the Eastern Side of it, (where our Disputes lie) has three several different Boundaries, in the several Parts of it, as you proceed along the Peninsula Northwards, *viz.*

1. The Great Western Ocean.
2. The Estuary of *Delaware* (translated *Bay* in the Defendant's own Charter for *Maryland*—)
3. The River of *Delaware*.

Into the Head of *Chesapeake* Bay runs *Susquehanna* River; into the Head of *Delaware* Bay runs *Delaware* River.

Along, upon the Eastern Side of this Peninsula, and also above, or more North than this Peninsula, lie the three Lower Counties, now called *Newcastle*, *Kent* and *Suffolk*, (called the Lower Counties to contradistinguish them from the Province of *Pennsylvania*, which being also in Mr. *Penn*'s Hands, and laying more North, were heretofore vulgarly called the Upper Counties.)

On the Western Side of this Peninsula, lies Part of one of the two Tracts of Land whereof the Province of *Maryland* consists.

More Southwards, (or lower down) than the Foot, or Southermost Part, of the three Lower Counties, *Maryland* does, there, extend across the whole Peninsula, from one side thereof to the other, quite from *Chesapeake* Bay, on the West Part, to the main Ocean, on the East Part, for there it was *inculta* at his Grant.

As this long Neck of Land is called, by the Crown, by the Parties, and by all Historians and Geographers who ever writ of it, a Peninsula, it's next to be considered where the Isthmus is that finishes or concludes this Peninsula?

In order to consider what may properly form the Isthmus of this Peninsula, there are (as we think) but three things that can, regularly, form it.

1. The Place where the Tide and Flowing Waters on each side approach the nearest to each other. And that Place is markt, in the general Map, by a Line from *M*, to *N*, being, from the flowing Water in *Bohemia* River, to the flowing Water in *Apoquinimink* Creek, and there the flowing Waters are distant but about 4 or 5 Miles, asunder.
2. The Place where the very Bodys themselves of the Bay of *Chesapeake* and great River of *Delaware*, meet the nearest to each other; and that Place is a little more North than the first, being markt in the general Map, by a Line from *O* to *P*, and there, the Great Waters are distant about 22 Miles, asunder.
3. The natural Shape of the Land, so environed with Waters; and which falls in, exactly, with the Place last mentioned.

For it is in Proof that the great Waters, on both sides of this Peninsula, (both above and below) do greatly diverge from each other, and no where approach so near to each other, as they do at this Place.

But it's the Defendant's Interest to carry this Peninsula, and the Isthmus of it, as high, or as far North as possible, and he has got one sing'e Witness, only, from whom we are told

4. That there is (some where or other) a Place, in the Land, where two Spring-Heads rise, or break out, within about a quarter of a Mile of each other, which run, one of them, down to *Chesapeake* Bay, or to some River that runs down to it, and the other, towards *Delaware* River or Bay; and so he would infer, that as (some) Waters do there meet, much nearer than at any of the Places we have mentioned, *that*, therefore, must be the true Isthmus.

But, he does not tell us what sort of a Rill or Run of Water proceeds from either of these Spring-Heads; whether so large as a Straw, or not;

He by no means tells us whereabouts these same Spring-Heads are.

And, in the Nature of the thing, a Peninsula, as this is, which, in every other Part of it, is wholly surrounded by the vast Atlantic Ocean, and by the great Bays of *Chesapeake* and *Delaware*, (such prodigious Waters as those) can never have its Isthmus formed by a Matter so extremely minute and disproportionate as a small Rill or Run, at the first Rising or breaking out of a Spring-Head.

And, if it could, we need not go so far North, to find such an Isthmus, so formed as that; because, if that would properly make the Isthmus, we have many Places, down more South, in the very Body of the Peninsula, where Spring-Heads rise yet nearer to each other, and run both ways; we have single, individual, large Ponds, or Lakes, from which one and the same common Source the Waters flow both ways, and consequently, according to such a Construction, would make the Peninsula a compleat Island; and we have other Places where the Spring-Heads, which run into one, and into the other side, do more than meet together, for that they lap over each other, or interlock, as it is called.

The next thing material is, to fix the Latitude of any Part that we can, & of or about this Peninsula; I mean, the Latitude, as known at the Time when this Peninsula was first discovered and described.

Now we, at present only say (and it shall be abundantly proved by and by) that the Bay of *Chesapeake*, and the Western side of this Peninsula, were discovered by Captain *John Smith*, an Englishman, in 1606, and that he publish'd at *Oxford*, and in *London*, three different Editions of his Discovery, and three Editions of his Map thereof, so very early as in the Years 1612, 1624, and 1625, which Dates will be very material hereafter.

In all those early Maps, and according to the Knowledge of those early times, (which must be the Rule for explaining any Transactions of those Times) the Line of the 40th Degree (compleat) was laid down to be about 7 Miles more North than the Head of *Chesapeake* Bay.

In other ancient Maps, printed since that Time, that Line of the 40th Degree (compleat) is found to lay more North, still.

And now, in new modern Maps, it's carried still much farther North, even than it was before,

Having mention'd the Line of the 40th Degree compleat, it behoves us to lay down our first Principles as plain and precise as possib'e, and it will yield us great Clearness and Perpicuity in our Arguments afterwards to do so.

Therefore, the Degrees of Northern Latitude are contained between imaginary Lines in the Heavens.

They begin from the Equator.

And, when measuring the Earth, to measure 60 Geometrical Minutes, or 69 English Miles and $\frac{1}{2}$ North from the Equator, all that whole Space is in, within, or under, the first Degree of Northern Latitude.

Then, the Line of that first Degree is the Mark where the first Degree is fully compleat and ends, and, there, the second Degree instantly begins.

The Line where any one Degree is quite compleat and ends, and where the next begins, is an indivisible, imaginary Line, without any sort of Space or Width, whatever, in it.

But, a whole Degree, itself, even here, upon the small Globe of the Earth, has great Width and Space in it, and is very capable of being divided, and is constantly divided into Sixty Minutes or Geometrical Miles, and again, subdivided, into Seconds, Thirds, and so on.

So that the Line of the 40th Degree is the Place where the whole Space of the 40th Degree is finished and concluded, and is quite compleat, and where, at that instant, the 41st Degree begins.

We have no clear Account of the Latitude of any other certain Place, (as it was known or esteemed in those very early Times) save only of the Head of *Chesapeake* Bay, which we find by *Smith*'s Map, was then underlaid to be 7 Miles short of the Line of the 40th Degree compleat.

Which will be sufficient for us to establish; and will be exceedingly material for us.

For if we have, by the Agreement, which we now pray a specifick Performance of, conveyed to the Defendant Lands, a great deal more North and above that Old Line of 40, we are at every rate Purchasers from him, and at such a valuable Consideration, as intitles us to the Aid of Equity, and the said Agreement can not be called (in any legal Propriety) a mere voluntary Agreement, or without Consideration.

We have before said, that the Eutuary, or Bay, of *Delaware*, makes but One of the Three several Eastern Boundaries of this Peninsula; but where does that Bay end, and where does it begin?

Those shall be the next Questions to be considered.

Delaware Bay (which lies on the East-side of the Peninsula) ends, according to one of our Witnesses, a Landman, at the *Bite*, between *Red Lyon* and *Apoquinomink* Creeks, about ten Miles South of, or below, the Town of *Newcastle*,—and indeed, by the Map, it would appear so; and above that *Bite*, then, the River *Delaware*, at the Head of *Delaware* Bay, begins, (for its part) to diverge, and run to the Eastward, as the other River *Susquehanna*, at the Head of *Chesapeake* Bay, also, runs away and diverges, as quick, and as strongly, for its Part, to the Westwards.

But, as a Sea-Bay falls, more immediately, under the Consideration of Navigators, the Witnesses of that sort, on both sides, agree that the Bay of *Delaware* ends about 30 Miles South of the Town of *Newcastle*, at a Place called *Bombkeys Hook*; and that the Water, North of, or above that Place, is not the Bay of *Delaware*, but the River of *Delaware*.

The Bay of *Delaware* begins still much further Southward, at the two Capes, which form the Mouth or Entrance into it.

The very old, early Map of 1606, (published and republished in 1612, 1624 and 1625,) was not so exact as to give us any Names, whatever, for the two Capes which formed the Mouth of *Delaware* Bay. Nor, indeed, does it clearly distinguish the whole Eastern Side of the Peninsula, for Captain *Smith* went up the Bay of *Chesapeake* on the Western Side of the Peninsula.

But, the second Sett of ancient Maps, both foreign and English, which were made upon further Discoveries, (by which, I mean, such as were made after *Smith*'s Map in 1606, and yet precedent to the Year 1680) do give us the Names, then known, for the two Capes that formed the Mouth or Entrance of the Bay of *Delaware*.

And they were, then, long before 1680,

Cape *Cornelius*, and Cape *May*.

The Witnesses who speak of this matter from Tradition, from old Persons, and from ancient Histories, also add, that *Cornelius May*, a Dutch Skipper, in the Year went up this Bay of *Delaware*, (just as, several Years before, Captain *Smith* had gone up the Bay of *Chesapeake*) and gave his own Christian and Surname to the two Capes that formed the Mouth or Entrance into *Delaware* Bay, *viz.* *Cornelius* and *May*; Cape *Cornelius*, Cape *May*.

It is most certainly true, that the Western of the two Capes, (being that which lies on the Eastern Part of the Peninsula) does now, at this time, bear a new Name, very different from Cape *Cornelius*; from whence the Defendant takes an Opportunity of raising a Piece of Chicanery.

And the Reason of the altering the Name of that Cape, from what it was, to what it is, called, will by and by most clearly appear.

We are now got down, Southwards, to the Mouth or Entrance of the Bay of *Delaware*.

We must yet go lower.

When we go down more South than the Cape which helps to form the Mouth, Entrance, or Beginning, of the Bay of *Delaware*, (by whatever Name such Cape was, or is, called) then, the Peninsula bounds, Eastwards, upon the Western or *Atlantic* Sea and *Ocean*.

There is another Place, extremely material to be observed, upon the Eastern Side of the Peninsula, and to the Ocean; which is another Cape, anciently called Cape *Henlopen*, and which we insist on as the ancient South Bound of the Three Lower Counties, whilst in Possession of the Dutch, the Duke of York, and Mr. *Penn*, successively.

Chancery Court: Help to the Attorney in the Execution of the
Writs of Summons



The Scituation, Name, and Circumstances attending that Cape.

Cape Henlopen lay, on the East Side of the Peninsula, about 23 or 24 Miles to the South of Cape Cornelius, upon a Sea Warmet, at a Place called *Phœnix* or *Fenwick's Island*.

The Name of that Cape Henlopen is a *Dutch* Word.

The Translation of it is, Cape Run-away, or Cape Vanishing, or Cape Disappearing.

And it was a *significant* Name, and carried Sense and Meaning in it.

For, tho' the Land was higher there, and there were likewise, upon *Fenwick's Island*, very great high Trees, both which contributed to make the Land there look bold, like a Cape, or Promontory, or Head Land, when out at Sea; yet, when Sailors, upon the Faith of that Appearance, stood in to it, it answered its Name, it proved deceitful, it ran away, it vanished, it disappeared, as they approacht it nearer and nearer, and in fine, was found to be a *false* Cape, and not the true and real Cape that formed the Mouth of *Delaware Bay*; and consequently, they found they were not (as at first Sight they were led to hope and expect they were) then, within the Mouth or Entrance of *Delaware Bay*, but indeed, far without it, and South of that Mouth or Entrance.

However, it was still called a *Cape*, and still printed as a *Cape*, by the Name of *Cape Henlopen*, in *Dutch*, in *English*, and in other foreign, ancient, printed Maps; not indeed of the very oldest Date, such as that made in 1606, (because, so early as that, they had not precisely the Capes in them) but, in such ancient Maps as were printed long before the Year 1680.

And not only so, but the Inland Country, all therabouts, was called *Hinlopen*, after the Name of that Cape.

But, in Proces of Time, that Cape, which at first appeared as the Cape at the Entrance of the Bay, and which, at first appearance, was taken for the Cape that formed the Western Part of the Mouth or Entrance into the Bay of *Delaware*, being found, constantly, to run away, vanish, and disappear, according to the Meaning of its Name, and to be a deceitful and *false* Cape to Sailors, and that, in truth, it did not make, or form, One of the two Capes to the Entrance into *Delaware Bay*, it came to be called, by Sailors, as it really was, the *false* Cape.

And, again, in further Length of Time, the very Name of that, which indeed was not the true Cape, *viz.* *Cape Hinlopen* (or something like that Name, *viz.* *Cape Inlopen*) was, by Sailors, transferred, up to that Place where there truly and really was a Cape, or Entrance, into *Delaware Bay*, namely, to *Cape Cornelius*. And now, at this day, *Cape Cornelius* is not, generally, called so, unless by People who knew it a long while ago under that Name; but that Place is (now) by several People, of late Date, called *Cape Inlopen*.

From this trifling Incident, which the Defendant thought we should never be able to clear up (but wherein he has found himself abundantly mistaken) he has raised a most mighty poth, that tho' his own Map laid down both those Capes, and very truly too, *Cape Cornelius* more North, *Cape Hinlopen* more South; and tho' the Agreement, which he himself proposed, follicited, dictated, and forced us into, was, that we should carry the South Bounds of the Lower Counties, down to *Cape Hinlopen*, *South of Cape Cornelius*, and towards the *Main Ocean*: (For, by that *treble* Description is it expressed) yet, forsooth, that we deceived and imposed upon his great Ignorance of his own Country, for that (as he says) the Place, *anciently* and *originally* called by the *Dutch* *Cape Hinlopen*, and so printed, and by that very Name, in *all* their Maps, really and truly was up at *Cape Cornelius*!

But, has he supported this Pretence? Has he attempted to prove it? Has he proved *any one single* Map, *Dutch* or other, that called it so (anciently I mean, for that is the very Point in issue, and I well know that the *new modern* Maps do, now, call it so, for the Reasons above-mentioned?) Nothing like it.

On the contrary, we prove, by a Number of written Records, by many old Witnesses, and by all the Old *Dutch* and *English* Maps, printed before the Year 1680, (and consequently before Mr. *Penn* had any manner of concern in *America*) that there were then *two* several Capes, *Cape Cornelius* and *Cape Hinlopen*; and that *Cape Hinlopen* was *always* laid down in them *South of Cape Cornelius*.

Please to remember well, that this Old *Cape Hinlopen* did not lie *within Delaware Bay*, but down South of, or below, that whole Bay, and in or to the *Main Sea*.

Another thing to be noted in the Proofs is, that, whenever any Act or Instrument, or any Witness, relating to the Lower Counties, speaks of the *Sea*, or Lands bordering on the *Sea*, in the Lower Counties, That, of absolute Necessity, disproves my Lord's Pretence, and shews that the *Dutch*, the Duke of *York*, and Mr. *Penn*, always held Lands in the Lower Counties *lower* than the Place which we call *Cape Cornelius*, and which he calls the *New Cape Inlopen*; because, if the true *Cape Hinlopen* was *anciently* and really at *Cape Cornelius*, at the Mouth of the *Bay*, The Poffessor of the Lower Counties (so bounded on the South Part) could not have had an Inch of Lands to the *Sea*, but only by the *River* and by the *Bay of Delaware*.

There is but one thing more, relating to the Peninsula, to be mentioned, and removed out of the way, and that is, that the very Southern Extremity or End of it, is neither any Part of the Lower Counties, nor yet of *Maryland*, but is a Part of his Majesty's Province of *Virginia*.

Having said thus much, relating to the Peninsula itself, it may be necessary to state only 2 or 3 other Matters, very shortly, relating to the Scituation of other Places.

There was, anciently, a certain Territory called *New Netherland*.

That Territory is now called *New York*, and is divided into two Provinces, *New York* and *New Jersey*.

New Netherland (now *New York* and *New Jersey*) lays to the *Eastward* of the Peninsula, and to the *Eastward* of the Bay and River of *Delaware*.

And the *Dutch* were, once, possest of *New Netherland*.

Now, I will lay down some Points, which shall be most clearly prov'd, with respect to the first Part of the Cape, and the Extent of Lord *Baltimore's* Charter.

1. That the *Dutch* (antecedent to the Grant to Lord *Baltimore* in 1632) were possest of their *great Settlement* at *New Netherland*, and, of a *small Settlement* also, on the Western Side of *Delaware River* and *Bay*, in the Parts now called *Pensylvania*, and the three lower Counties: Which *smaller Settlement* was *subject* to, held under, governed by, dependant upon, and every way appurtenant to, their *great Settlement*.

2. That Lord *Baltimore's* Grant in 1632, was framed and made, by Capt. *Smith's* Map, and by no other.

3. That the Crown did not grant, could not grant, did not intend to grant, to Lord *Baltimore*, any Part whatever of the whole Space of the 40th Degree (from the 39th compleat to the 40th compleat) even as that Degree was then known; but intended he should be bounded Northward by the Line of the 39th Degree compleat, as known at that time, or, in other Words, by the *Beginning* of the 40th Degree.

4. That his Ancestor did not ask for, nor the Grant include, any Lands but what were then possest of *Savages*; Ergo, Not any Part of the three lower Counties, which were then possest and held by the *Dutch* (and by the *Swedish* Nation also,) in what Degree soever they did then, or do now, lie.

Queen *Elizabeth* granted Letters Patent to Sir *Walter Raleigh*, for the discovering new Lands and Countries, not actually possest by any Christians.

Captain *Smith* (as he tells us in his History) went up *Cheapeak Bay*, and afores in several Parts of it, and gave many Names to Places there. And (amongst others) Names to every Place (or to all but one) that is afterwards mentioned in Lord *Baltimore's* Charter.

King *James* granted one single Charter, to two separate Colonies, for Lands in *America*, between 34 and 45 Degrees of North Latitude. One of the Colonies to be the *Virginia* Company, and to consist of Merchants of *London*; the other, to consist of the Merchants of *Plymouth*.

The said King made a further Grant of some Part of those Lands unto the first Colony, being the *Virginia* Company of Adventurers of *London*.

The first Quarto Edition of Captain *Smith's* Book, and Map, of the Peninsula, was printed, at *Oxford*, containing the Line of the 40th Degree compleat, at the Distance of 7 Miles above the Head of *Cheapeak Bay*.

The King, by Letters Patent, grants to the second Colony in Fee, (being called the Council of *Plymouth*) all the Lands in *New England*, in *America*, from 40 to 48 Degrees, inclusively, and from Sea to Sea.

Ergo, While that Grant subsisted (which it did till long after 1632) The Crown, if it had been possest, and had been alst, and had intended to grant, could not grant any Part of the 40th Degree, which was already granted out to the Council of *Plymouth*.

Another Folio Edition of Captain *Smith's* Book and Map, was printed, in *London*, the same in Substance as the *Oxford* Quarto Edition of 1612.

Another great Work, being 5 Volumes in Folio, was published, in *London*, being called *Purchas's Pilgrims*, wherein *Smith's* History and Map, were, again, reprinted, as Part of that great Work.

Note, Each one of these Editions of *Smith* shew where the 40th Degree compleat, then lay, as aforesaid. — Shew that there was a Peninsula — And give the Names of — the Bay of *Cheapeak* — *Watkins Point* — *River of Wigbco* — the *River Potowomeck* — the Place called *Cinguack* — and *Cape Charles*.

Note, The *Dutch* called *Delaware* the *South River*, in contradistinction to *Hudson's River*, which was, also, in their Possession, and which they called the *North River*.

We have a proved Copy of a *Dutch* Record from the King's Secretary's Office in *New York* (where the Original remains) which shews these things, *viz.*

1. That the *Dutch* had, then, a Director and Council at *New Netherland*, at a Place called *Manhatans* (now the City of *New York*).

2. That several *Indians* came, and appeared, before that Director and Council, from the South Corner of the Bay of the *South River*, and acknowledged a Sale of Lands, which they had made on 1st *June* 1629, unto Mr. *Samuel Godyn*.

3. That those Lands, which those *Indians* sold, lay, on the South Side of the said Bay, by the *Dutch* called the Bay of the *South River* and stretcht in Length from *Cape Henloope* to the *Mouth* of the said *South River*, about 8 large Miles (8 Leagues).

Please to mark it very well. — Lord *Baltimore's* Pretence is, that the Place the *Dutch* called *Cape Hinlopen* did not lay below, or more South, than the *Mouth* of the said Bay, but at the *very Mouth* of the Bay itself.

But what say the *Indian* Owners, and the *Dutch*, so early as in 1630? Why, that *Cape Hinloop* was 8 great Miles from the *Mouth*.

By Charter, reciting expressly Lord *Baltimore's* Petition to have a Grant of Lands *hactenus inculta*, and inhabited by *Savages* having no Knowledge of Almighty God, The King, therefore, granted him his said Request, and granted him two Tracts.

1. All that *Part of a Peninsula between the Ocean* on the *East Part*, and the *Bay of Cheapeak* on the *West*, divided from the rest of the same [Peninsula] by a Line from *Watkins Point*, near the *River Wigbco*, to the *great Ocean*; and, between that Bound, on the *South*, *usque ad that Part of Delaware Bay on the North which lay under the 40th Degree of Northerly Latitude*, from the *Equinoctial*, where *New England ended*.

2. And another Tract, (between the above-mentioned Bounds) on the *Westward* Side of the *Bay of Cheapeak*, not material in the present Question.

3. The Charter contains a Grant of all Islands and Islets to the *Eastward* of the *Eastern Shore towards the Sea*, within ten Leagues from the said *Eastern Shore*.

And the King erected those Lands into a Province, by the Name of *Maryland*.

Now, we say by our Bill, and prove, that no *English* Map was extant in 1632, but *Smith's* Map only.

We have also charged, and proved, that no Map, *English* or Foreign (then extant) has the Names of the Places, such as are contained in the Grant of *Maryland*, but *Smith's* Map only.

Ergo, That Grant was described from *Smith's* Map.

The first Description in the Charter of *Maryland* is, most explicitly, a *Part of a Peninsula*, bounded *Westward* by the *Bay of Cheapeak*; Can that extend many Miles up into the *Main Continent*, (to the new discovered 40th Degree compleat)?

The second Description of the Tract granted to him is, that it was bounded, on the *East*, by the *Ocean*. But he desires that we would, additionally, read *Bay and River of Delaware*, otherwise, he can't go up to the top of the Peninsula itself, much less a great way up into the *Main Continent*, as he desires to do.

The third Description takes it, from its *South Bounds*, and says it shall extend *usque ad that Part of Delaware Bay which lay under the 40th Degree*. — This he desires us to read thus, unto such Part as shall, by any new Discovery, 100 Years hence, be discovered to be the 40th Degree compleat then. Whether *Delaware Bay* does, or does not, extend thither.

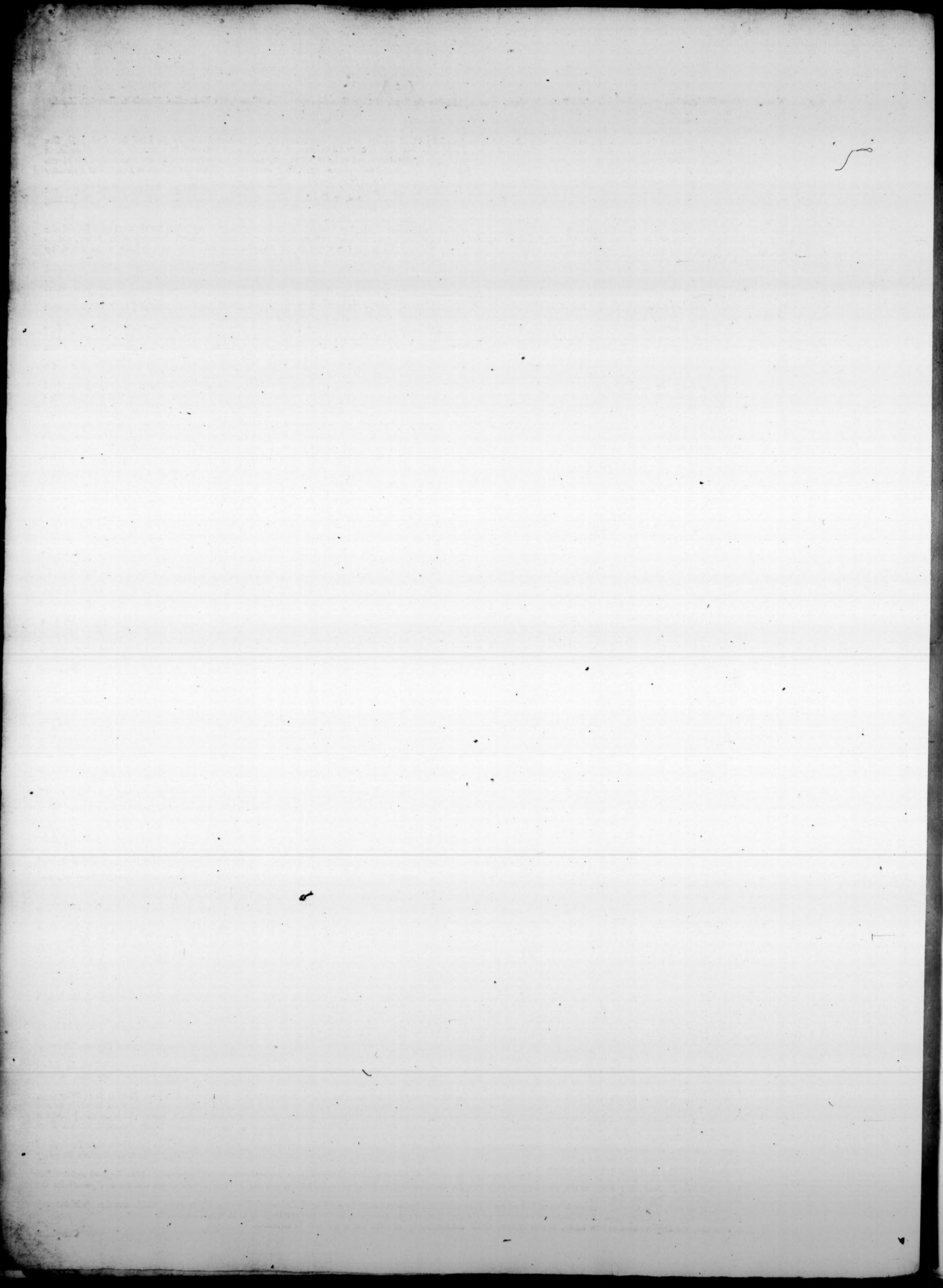
Now, his own Witness tells us, that our *Cape Cornelius*, which is the *Mouth* and very *Beginning* of *Delaware Bay*, lies in 39 Degrees, 5 Minutes: Does it so? Why then, that very *Beginning* of *Delaware Bay*, was a *Part* which, of *Necessity*, lays under the 40th Degree, and, being the *nearest Part* to his *South Bounds*, is the *Part* to which he was (according to his *Bounds*) to go. [*Hactenus inculta* will, still, exclude some more Lands, (even below that) but we speak, now, singly upon the *Bounds* of his Charter.] And it is to be well remembered, that we have proved that every *Part* of the *Bay*, whatever, even the highest *Part* thereof, ends about 30 Miles below *Newcastle*, at the *Place* called *Bombay's Hook*.

Again, if the *Dutch* were possest of Lands on the *East Side* of the Peninsula, and those Lands extended *down* to our old *Cape Henloop* (as we have just shewn their Purchase of the Lands, quite thither, from the *Indian Natives*) then, such Lands as those were not prayed for, or granted, and that will exclude his *Claims*, down to the *Southern Boundary* of the *Dutch* Possession, namely to *Cape Henlopen*.

There is a *fourth* Description in his Charter, that his Lands were to extend to such *Part* of *Delaware Bay*, as lay under the 40th Degree *where New England ended*. And where did *New England* end? Why, at the 39th Degree compleat; For the 40th Degree inclusively was, before, granted by the Crown to the Council of *Plymouth* for the Ruling and Governing *New England*.

And, Note well, The Crown, in many *Acts* and *Instruments*, since 1632, has had occasion to speak of Lord *Baltimore's* *Bounds*; Upon *every* which occasion (without any Exception) they emphatically speak of his *Bounds* as extending to the 40th Degree; not *through* it, nor to the 41st Degree, as he would construe it.

Note also, the *Degrees* must be now taken, as *then* known, altho' the *Knowledge* of those *Times* was ever so erroneous.



1633. June 28. July 3. Complaints were made to the King, from the first Colony of *Virginia*, that my Lord *Baltimore*, having a Grant of Land within their Limits, hurt their Colony, but nothing was determined by the King in Council thereon; For, by two Orders of this Date, the Lords of the Council left my Lord *Baltimore* to his Patent, and the other Parties to the Course of the Law.

1635. April 25. May 1. Several Copies of Papers, from the Board of Trade, containing the Resolutions to surrender the Great Charter by the great (unwieldy) Council of *Plymouth*, to the King; The Petitions of the Governor and other Members, to have particular Parts of the Lands reganted to them respectively; and the Copy of the Surrender to the Crown, from the Board of Trade's Books.

1635. June 7. Note. We have, out of that great Tract of *New-England*, so surrendred, no less than Nine New Colonies, which have been since created by the Crown, *viz.* *Pensilvania*, *New Jersey*, *New York*, *Massachusetts Bay*, *Connecticut*, *Rhode-Island*, *New Hampshire*, Province of *Main* and *Nova Scotia*. So that if that Old Surrender does not, regularly, appear, it ought to be presumed; (And, indeed, the Surrender is not enrolled in Chancery.)

Lord Baltimore's Old Map. Sept. 8. A thin Quarto Book printed this Day, Month and Year, by the then Lord *Baltimore*, three Years after his Patent, giving an account of his Landing and Settling, and of his Patent, and of the Country so granted to him, and containing a Map of his Country, with his Arms thereon. This valuable Book was borrowed out of Sir *Hans Sloan's* Library, who, it's proved, has had it 40 or 50 Years.

1638. April 4. And here he manifestly, so early, made a Claim from the 38th Degree compleat, to the 40th Degree compleat.

But he, there, expressly made that 40th Degree compleat exactly to intersect, or cut, the Head of *Chesapeake Bay*; so far was his Ancestor from imagining that a Part of the *Peninsula* extended up into the *Main Country*.

It's pretended that one *William Clayborne* was possesst of the *Isle of Kent*, in *Chesapeake Bay*, within the Bounds of my Lord *Baltimore's* Patent, and that he petitioned the King not to be dispossesed by Lord *Baltimore*: But that the Council were of opinion that that Island, (being within my Lord's Limits) was well granted to my Lord.

And this is made use of to shew the very early Opinion of the Lords of the Council, that my Lord was to have to his Limits and Bounds, whether *Culta* or *Inculta*.

But this is a shameful Invention (*not to say Forger*) of a blank, unattested, suppos'd Copy of a Paper, first set on foot, and produced, by Lord *Baltimore* in 1685; and then given up by him; and again, revived, by the present Defendant, upon an *ex parte* Hearing at the Board of Trade, in 1734.

When there never was any such Order, as is abundantly charged in our Bill, and fully proved by many Witneses, and the Council Books, of that Time and that Day, are extant, and many Orders therein, but not a Syllable of any such final Order, nor yet of any Reference of such a Petition, which should, and is suppos'd to, have preceded it.

We have Dutch Records from *New York*, protesting against the *Swedish* Governor *Peter Minuit*, settling in the South River (now *Delaware*) which has been, many Years, in the Dutch Possession, and settled above and below by the Dutch Forts.—Also a Judgment condemning a Man, for an Offence, to serve the *Dutch West-India Company*, along with the Blacks, at the *South River*.—Political Ordinances forbidding every Inhabitant of *New Netherland* selling Powder, &c. to the *Indians*, &c. on pain of Death. Also forbidding all Persons to go with Boats and Vessels to the *South River*, without a Writing from the Director General at *New York*, on pain of Forfeiture of Ship and Cargo.

1642. Dutch Records, from *New York*, containing an Account that some *English* had, now lately, dared to come into our Limits, in our *South River* at the *Skulkill* (Note, that's up as far North as the City of *Philadelphia*) where they have seated themselves, against our Fort *Nassau*, without Commission from any Potentate. Resolving that they shall be dispossesed, sending Orders to their Factor *Jan Janzon Van Elpendedam* to dispatch Sloops and Men to disposses them, bring them hither, and ruin the Place to the Ground.

1644. Another Dutch Record, from *New York*, whereby the Dutch Fiscal-General protests against *Govert Cookermans*, that he should not carry on Trade, in the *South River*, where *Van Ilpendedam* is, with the *Indians*.

1646. Dutch Records, from *New York*, granting to 4 Dutchmen 100 Morgen (200 Acres) of Land, to settle 3 or 4 Plantations, upon the West-side of the *South River*, to be subject to the Sovereignty of their High Mightinefies, with Promise of more Land if they build.

1647. Dutch Record, from *New York*, being Resolutions of the Governor and Council there, that *Andries Huddie* shall continue Factor at Fort *Nassau*, in the *South River*, of the *New Netherland*, for the Service of the *Dutch West-India Company*, and to have Pay as other Factors.

1648. Dutch Record, from *New York*, of a Report or Representation made by that Factor *Andries Huddie*, containing an Account of the Proceedings of *Johan Printz*, Governor over the *Swedish* Troops in the South River of *New Netherland*, as also of the *Swedish* Settlement in the said River. He takes notice of the several Forts built there by the *Swedes*, some in 1638, tho', says he, the *Dutch West-India Company* had Forts, Men, and Stores of War, there, above 14 Years before the *Swedes* had; and contains a very particular Account of the several Settlements there made, both by the *Swedes* and *Dutch*, and the continual Contests and Quarrels between those two Nations, touching their Right to the same.

1649. The *Dutch* purchased Lands from the *Indians* in the *South River*, but those Lands were on the East-side of that River.

1650. From the same *Dutch* Records at *New York*, a Protest entred, made by the *Swedish* Factor, against the *Dutch* Government, for stopping and seizing the *Swedish* Ship going to the *South River*, which they did upon pretence that the late *Swedish* Governor *Johan Printz*, or the new *Swedish* Governor *Jan Rising*, had taken Fort *Casimir* from the *Dutch*.—And Counter-Profests, from *Peter Stuyvesant*, the *Dutch* Director-General, and the Council, at *New Netherland*, wherein they insist, and offer to prove, there, on the spot, by authentic Writings, and by Christian and *Indian* Witneses, their undoubted Right and Property to the Lands in the *South River*, by virtue of the first Discovery, Ancient and first Possession, many Years before any other Christian Nation, the erecting of divers Forts, above, below, and in the Centre, of the said River, both on the Eastern and Western Shore, purchase from the *Indians*, &c.

1651. The Disturbances continuing, between the *Swedes* and *Dutch*, the *Dutch* Director-General takes up Money, upon account of the *Dutch West-India Company*, for an Expedition to the *South River*, and to pay the Soldiers there; Also, a most solemn and extensive Commission, granted by *Peter Stuyvesant*, the *Dutch* Governor, and the Council, at *New Netherland*, appointing one *John Paul Jacques* Vice-Director and Chief of the *South River* of *New Netherland*, over the Fortresses, Lands and other Places lying on the said River, and for Security of Fort *Casimir* and other Places, to cause all Matters to be observed relating to Trade, Policy, Justice and the Militia, and also over the Soldiers, Sailors, free Persons, high and subaltern Officers, and to command all, for the *West-India Company's* Service, and administer Right and Justice, as well Civil as Military, &c.

1652. From the same *Dutch* Records, in *New York*, Entries of Nine Grants from the Director-General and Council of *New Netherland*, unto several Persons, of some Lots of Lands in the *South River*, near Fort *Casimir*, (wherein they mention 67 Lots having been laid out) and granting also Plantations in the *South River*.

1653. The Director and Council of *New Netherland* (by Orders from *Holland*) made a formal Conveyance, unto *Jacob Alricks*, Director and Commissary under the City of *Amsterdam* over their Colony in the *South River*, of the Fortres *Casimir*, then called *New Amstel* [now called *Newcastle*] with all the Lands thereunto, according to the first Sale from the Natives, dated 19 July 1651.

1654. And the Description of those Lands is extreamly material, *viz.* Beginning, on the West-side of *Christiana* Kill, to the Mouth of the Bay or River, called *Boomtjes-Hook*. (So that they, then, held that the End of the Bay, and the Beginning of the River, was, as our Witnesse now say, at *Boomtjes-Hook*.)

1655. To hold to *Jacob Alricks* to the Use of the City of *Amsterdam*.

1656. The *Dutch* Director at *New Netherland*, *Peter Stuyvesant*, lays before the Council there, several Proposals, for regulating the Company's Affairs in the *South River*, collecting the Customs there, settling sundry Persons near a Fort there called *Altena*, beginning Plantations, &c. there, and the Council advise him to go thither, himself, about those Matters.

1657. And, the same Year, the said Director and Council appointed a new Governor, over the *South River*, one *William Beckman*, and give him all the like extensive Powers and Authorities as were granted in 1655, to *John Paul Jacques*.

Old Dutch Map. Note. We have one old living Witnes, *William Peterson*, who knew the *Dutch* in *Pleisje* in 1658.

An old *Dutch* Map, *sans Date*, but it calls *New Amstel*, by the Name of Fort *Casimir*; Ergo, it must have been made before 1657; for, then, we see, it had got its new Name of *New Amstel*.

And this old *Dutch* Map makes the Line of 40 compleat, not more than 3 Miles above the Head of *Chesapeake Bay*.

And lays down both *Cape Cornelius*, at the Mouth of *Delaware Bay*, and then, *Cape Henlopen*, a great deal South of it, exactly like the Map we went by in settling the Agreement.

And, surely, all this shews (even to the Conviction of the Defendant, tho' unwilling to be convinced) that the *Dutch* were possesst of *New Netherland*, as their Head-Settlement, and of the *South River* and the Lands expressly on the West-side of the *South River*, as appurtenant to their great Settlement.

For, in this old *Dutch* Map, *Cape Hinloop*, Fort *Casimir*, Fort *Christiana*, *Mattinakonk*, and *Skylkill*, Places named in these Records, are all laid down on the West-side of the *South River*.

These shew that the *Swedes*, also, possesst, and that continual Quarrels were between those Nations.

The Great Charter of *New England*, which had been granted to the Council of *Plymouth*, having been surrendred back to the Crown, King *Charles* the Second, soon after his Restoration, refolved to take advantage of those Quarrels between the *Dutch* and *Swedes*, and to disposses them both; and to erect several Provinces there, under the *English* Crown.

1663. Mar. 12. 160 Car. 2. And accordingly

King *Charles* granted to the Duke of *York*, in Fee, a large Territory, Part of the Main Land of *New England*, and, amongst many other Descriptions, all the Land from the West-side of *Connecticut* River to the East-side of *Delaware Bay*, together with all Lands, Soils, Rivers, Harbours, Woods, Waters, Royalties, Profits, Commodities and Hereditaments to the said Lands and Premises belonging, and appertaining, with their and every of their Appurtenances.

If the Lands, even on the West-side of *Delaware Bay*, were really and truly appurtenant to the Great Territory granted, which lay on the East-side, then, as such, they might well pass.

1664. April. 2. And that they really were so, and were thought to be so by every body, will most clearly appear, immediately.

The Duke of *York* immediately gave a Commission, reciting the Grant from his Brother King *Charles*, and appointing *Richard Nicolls* his (first) Governor over the Places so granted to him, which Commission is enrolled at *New York*.

April 23. And to shew the Intention of making this Grant,

King *Charles* gave several Sets of Instructions to the said *Richard Nicolls*, and also to Sir *Robert Carr*, *George Cartwright*, and *Samuel Maverick* (which are entred at the Board of Trade) to reduce the *Dutch* in or near *Long-Island*, or any where within the Limits of his Majesty's Dominions, to an entire Obedience to his Majesty's Government.

April 26. And, three Days after, the King gave those four Commissioners a Commission (which is recorded in *New York*) to determine all Complaints in all Matters Military, Criminal and Civil, and to proceed in all Things for settling the Security of the Country.

July 3. Those Commissioners, not being then arrived, we have the last Acts under the *Dutch* (for that time) being a Grant enrolled at *New York*, from *Alexander Hynossa*, Governor of *New Amstel* under the City of *Amsterdam*, of a large Tract of Land near that Fort, unto one *Gerret Van Swerengaen*.

Now the King's Grant and Commission got over, together with four Ships of War, to *New Netherland*, and there we find recorded

A Proclamation that all Foreigners must be expell'd, or else reduced to the Obedience of the King of *England*.—The *Dutch* Governor *Peter Stuyvesant*, sends to know why the King's Ships come there.—Colonel *Nicolls* answers and requires the Surrendry of all Forts and Places possesst by the *Dut. b.*, and particularly, of the Town upon the Island *Manhattoes*, with Promise of Life and Liberty to those who submit, and Threats of the Miseries of War to those who refuse.—The *Dutch* Governor *Stuyvesant* insists on the Right of the *Dutch* particularly to the *South River* from 1622.—Colonel *Nicolls* gives Orders to the Commander of the Squadron to reduce the Place.—Governor *Stuyvesant* prays that Hostilities may cease, and to treat of an Accommodation.—Colonel *Nicolls* insists on his first Summons, and will treat on nothing fave Articles for Surrender of the Towns and Forts.—Governor *Stuyvesant* commissions Persons to treat, and Colonel *Nicolls* also.—On 27th August, Articles of Surrender agreed on, and on the 29th ratified by Governor *Stuyvesant*.

August 15. Thus *New York* itself was reduced, and from that time called *New York*.

But did they stop there? No. There were Appurtenances.

In 5 Days after *New York* was taken, *viz.*

September 3. Governor *Nicolls*, and two others of the Commissioners, grant a Commission to Sir *Robert Carr*, dated at the Fort in *New York* in the Isle of *Manhattan*, reciting that the *Dutch* have seated at *Delaware Bay*, and drawn great Trade thither, which if they be permitted, the gaining of this Place will be of small advantage; Therefore being determined to bring that Place and all Strangers thereabouts to his Majesty's Obedience, they appoint two of the Frigates and the Soldiers to go there, under the Command of Sir *Robert Carr*, and reduce the same. [There are also some Instructions to Sir *Robert Carr* about my Lord *Baltimore*, but we had better avoid them.] And on 1st October, a Treaty was there struck up, between Sir *Robert Carr* and the Burgomasters, on behalf of themselves and all the *Dutch* and *Swedes* inhabiting in *Delaware Bay* and River, to submit to the *English* Crown, and to be protected in their Estates, with Liberty of Conscience, &c.

October 26. Governor *Nicolls* begins the Exercise of his Power over *Delaware Bay*, for he licenses a Person to go from *New York* to trade there. And certifies that a Quantity of Powder and Shot were spent at the reducing the Fort at *Delaware*. And the Commissioners sent away one of the Frigates to sail for *Portsmouth*, to give notice to the Duke of *York*.

Now please to consider from the following Proofs whether *Delaware* was, or was not, taken to be an Appurtenance to *New York*.

police and medical staff. This has often led to

severe criticism of the police and medical staff

and many questions as to what

should have been done differently

and the best way to deal with such situations

and to deal with grievances and

grievances and complaints in a more

positive and constructive way.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

It is important to remember that

police and medical staff

are not perfect and

they are not infallible.

1665. Governor Nicolls at New York grants a Licence to a Man to alien Lands at Newcastle, to another to trade with the Indians about the Hoarekilles in Delaware Bay, making due Entry of his Goods with the Officers at Delaware; and another Licence to that Man to pass from New York to Delaware, from Delaware to Maryland (so they were dining Places) and back again.

1666. Governor Nicolls at New York directs the Collector and Receiver General of the Customs at Delaware to stop the usual Collection of the 10ths of all Goods, Liquors, Peltrey, &c. and give them some temporary Privilege for Encouragement of Trade; so that, until contrary Orders, No Custom shall be paid in Delaware River, but nevertheless they must make an Entry of their Goods.

1667. The Treaty of Breda was made between England and Holland, whereby each Party was to keep and possess, in Proprietary, all Lands, Places and Colonies, which, during that War, or at any Time before that War, had, by Force of Arms, or any other Way, been gotten and obtained from the other.

1668. Governor Nicolls at New York gives a Grant of Confirmation unto five Persons, in Fee, of a Plantation to each of them at Newcastle.

Now, from an infinite Number of Instances, Francis Lovelace appears to be the [second] Governor of New York, but his Commission as such does not appear.

Almost the first Act he did at New York was to settle the Government and whole Constitution, Civil and Military, in Delaware. Appoints a Garrison and a Commission Officer. The Civil Government to be continued till further Order. If any Complaint be made against the Civil Magistrates, the Commission Officer Captain Carr is to call a Council of five Persons, there named, to determine the same; that Council to advise him in all Affairs relating to the Indians. Fines for light Offences to be moderate. The new appointed Counsellors to take the Oath to his Royal Highness. The Laws of the Government established by his Royal Highness to be communicated to the Counsellors and others. No War to be made with the Indians, till you receive Directions from the Governor. In all Matters of Difficulty and Importance, you must have recourse by way of Appeal to the Governor and Council at New York.

He also at New York granted out Lands, at Newcastle 120 Acres, and another 46 Acres, and a Licence to a Man to alienate a House and Ground there.

A Letter from the late Governor Nicolls and the present Governor Lovelace, jointly, dated at New York to Captain Carr, (who was the Commission Officer at Delaware) to call his Council for Civil Affairs, to give necessary Orders for the good Government of Christians and Indians, and especially to prevent selling strong Liquors to the Indians; but what You conclude must be remitted hither, to New York, and shall be confirmed as if we had been present.

And many other Acts and Orders made at New York relating to the Affairs of Delaware.

Governor Lovelace at New York makes 14 several Grants of Lands in and about Newcastle, and several other Parts of Delaware.

Also made a general Order at New York, that the Inhabitants, in and about Delaware, are under this Government, and they, as well as others, must bring in their old Patents of the Dutch Tenure, and take out new Grants, under Penalty of the Law.

And other Orders or Commissions, da ed at New York, appointing William Tom to take up, kill, or mark wild Hogs at Delaware. — Also ordering the Officers at Delaware to issue a Proclamation in the Governor's Name, for the apprehending a Swede and a Finlander, (call'd the long Finn) who were seditious Persons. — Also Orders, that the People about Delaware may have an Enlargement of their Bounds at Apoquinimi, so that a Draft be taken of the Place, and sent to the Governor. Whereupon, those who settle there shall have Patents. — Also, that some Families from Maryland may come and settle below Apoquinimi, within the Government, it tending to increase the Inhabitants within those Territories; but a Draft is to be taken of the Land, and a Return of it made to me, that they may have Patents. — Commission to William Tom to collect Quit-Rents from All Persons holding Lands at Delaware, or Delaware River. — Orders in private Causes depending at Delaware. — Minutes of Governor and Council, thanking Captain Carr for securing the long Finn and others, and preventing an Insurrection at Delaware, and ordering him to keep the Persons in Custody, till the Governor himself goes, or sends, to examine into, and try the Fact; and to take an Account, in the mean time, of the Estates of the Persons concerned in that Plot. — The Governor's Letter thereon to Captain Carr, thanking him for the good Service he had done in that Matter to his Royal Highness, and bids him enjoin the meaner Persons concerned to labour in the Reparation of the Works about the Fort. — Minutes of the Governor and Council at New York, that the long Finn deserves Death, but that he be whipt, branded, and sold to Barbadoes. — They confirm the Sentence of Death passed upon an Indian who ravished a Woman at Delaware, by ordering that Sentence to be executed. — The Governor writes to Captain Carr, that as to the ordinary People, concerned with the long Finn, I have thought fit to excuse them by a Pecuniary Mulct. — A special Commission from Governor Lovelace at New York, to try the Persons concerned with the long Finn. — Resolutions of the Governor and Council at New York, that there be an Officer appointed to keep the Peace at Newcastle, and that a Commission be sent for that Purpose. — Also Orders about releasing one Douglass at the Whorekilles, who had misbehaved there. — A Commission sent from the Governor of New York to several Persons to be Scout and Commissaries at the Whorekilles, to keep good Orders there for his Royal Highness, to try all Matters in Difference under 10l. there, amongst themselves. — But for what shall be above, and for all Criminals, You must apply to New York. — Also now lays on again, the Customs of 10 per Cent. at the Hoarekilles, on all Goods, appoints an Officer there to receive it, and to render the Governor an exact Account.

Note, The Place then called Hoarekilles, was a very large District or County, and in one Part of that County there was a Town, which Town is now called Lewes Town, and that particular Town is a little within the Land, not far from our Cape Cornelius.

1670. A great Number of Letters, and Orders and Commissions, made and granted by Governor Lovelace, and the Council at New York, viz. — A Paf to a Man to go to Newcastle, or any Place in Delaware River. — The Governor sets aside an Order made at Delaware for an Injunction in a private Suit between Parties. — Gives Orders to Captain Carr to make Enquiry into a late Murtherer, and to demand the Murtherer from the Indians, to put themselves in a posture of Defence, and muster the Burghers. — To abolish the Customs, again, at the Whorekilles upon the Inhabitants Request, and under Conditions. — A Licence to trade with the Indians at the Whorekilles. — A Commission to take up Mill-stones at the Whorekilles. — Orders Captain Carr to disband some of his Men, now in Winter, when no Fear of any Indian Attempt, and take them on again in the Spring. — Commission to James Mills to be Surveyor of Lands at the Whorekilles, and Parts adjacent. — Licence to a Man to purchase Lands South of the Whorekilles, the Draft to be returned to me, that he may have a Patent. — Instructions to send the Governor an Account whether the Inhabitants are increased, or decreased, at the Whorekilles, and whether any more Families will settle there under his Royal Highness, and whether the Scout there is to be changed this Year or not; and to send the Governor the Names of two Persons, for Scout, of which he will chuse one, to remove the Customs, and to restore them to their ancient Liberty.

1671. The Records from the Secretary's Office of New York of this Year are exceeding numerous, viz. Seven Grants entered at full Length from Governor Lovelace there, as the Duke of York's Governor, unto sundry Persons, for many Parcels of Land in Newcastle, and what is now called the Three Lower Counties, reserving the Quit-Rents to the Duke of York. — The Governor's Release to a Grantee, of the Forfeiture, for not having settled Lands in Time, which had been granted to him. — A Special Writ in an Action of Debt, commanding the Defendant residing at Newcastle to appear in the Court at New York, and directed to any of the Officers at Delaware. — Governor Lovelace's Commission at New York, appointing a Surveyor of Lands on the West Side of Delaware River. — His Special Commission, appointing the Magistrates there a Court of Oyer and Terminer. — Ordering the Officers to permit a Brief to be collected there for building a Lutheran Church at New York. — Governor Lovelace's Permit for a Ship to go to Newcastle, and from thence up the River Delaware. — A Licence to a particular Person to trade to Delaware. — A Paf to another Person to go up the River there, to trade at the Swedes Plantation. — Many Orders from Governor Lovelace at New York to Captain Carr at Delaware, about Military Affairs, about Wars and Disturbances from the Indians, severely reprimanding him for receiving the Duke's Pay, and letting the Fort run to Decay, and not digesting the Inhabitants into Military Form, nor having armed the one half of them. — The Governor's Order, taking off again, now, the Prohibition which had been formerly ordered against exporting Corn from Newcastle, and any Part of Delaware River. — Numbers of Minutes of the Governor and Council at New York, relating to sundry Affairs at Newcastle, Delaware, the Whorekilles, &c. Containing political Ordinances to build a Block-House, keep Watches, prohibit distilling of Spirits, to licence and restrain the Number of Victuallers, to appoint Comitables, as in the rest of the Duke's Dominions, to confirm such Grants of Lands there as the Officers had granted, the Whorekill to have Officers subordinate to those at Newcastle. — But, for the future, the Officers there, are not to grant Lands, but the Persons who want the same must apply to New York. — And, as to the Tenure of the Land at Delaware, it's to be held in free and common Soccage, as the Duke by the King's Patent holds all his Territories in Ameri. a, only with this Addition, that they must pay the Quit-Rents, as an Acknowledgment to his Royal Highness. — Prohibiting, on Pain of Death, selling any Powder, Shot, or strong Liquor to the Indians, &c.

In short, the Records of this single Year prove Instances, of every sort that can be conceived, of Delaware being appertaining to, and entirely dependant on, New York, while under the Duke of York.

Ogilby's Maps. In this Year was publish'd Ogilby's America, wherein he gives an Account of the New Netherland. Publishes a Map of Virginia, being a Copy of Captain Smith's Map, only with more Names of Places then added. Also publishes a Copy of Lord Baltimore's Map of Maryland, exactly like that which my Lord himself publish'd in 1635. only the Line of 40 is carried seven Miles above the Head of Chesapeake Bay. And publishes a third Map of New York, in which this King Charles's Geographick Printer, in the Year 1671, lays down both Cape Cornelius, and Cape Henlopen, as two distinct Capes, exactly like the Map my Lord Baltimore made use of.

1672. Also, in this Year, there was an Order of Council to declare a new War, against the Dutch.

Governor Lovelace's four Grants at New York, for Lands at Newcastle and Delaware, to several Persons. — His Orders to the People at Whorekilles, — to make a new Election of Scout and Commissaries, and return them to him to be confirmed, and his Order confirming some of those which they so return'd. — His Order, excusing a particular Person in Delaware River from training in the Militia. — His Passes and Permits to Ships, and to divers singl Persons, to go to, and trade at Whorekill, Delaware, and up the River. — A particular Licence to one Person to distill. — His Commissions at New York, appointing the Bayliff at Newcastle, the High Sheriff at Newcastle and Delaware River. — A Person to seize stray Horses at Newcastle, and on the West Side of Delaware, for the Duke's Use. — Appointing a Receiver of the Duke's Quit-Rents at Newcastle and Delaware River. — Many Minutes of the Governor and Council of New York, relating to the Affairs of Delaware, viz. That Newcastle be a Corporation, and consist of such and such Officers. — And to try Causes, there, as far as 10l. without Appeal, their Scout to be turned into a Sheriff, and he to be elected annually. The Garrison to be continued in Pay. A Man sent from the Whorekilles, and censured at New York, for Contempt of the Authority of the Duke's Court held there; but he to give Security for the Peace, and ask Pardon of the Magistrates. — Leave given to the Whorekill to lay a Duty on strong Liquors for one Year. — Orders, that all Ships from New York be at Liberty to go up the River to trade, but None to have such Liberty, but such as go from New York directly. — Orders in Equity, touching a Matter arising in Delaware River. — Order at Common Law confirming a Judgment, and issuing an Execution, against an Island in Delaware River, the Estate of the Defendant.

And, amongst other Things, Governor Lovelace's Letter in August to Governor Calvert, demanding Reparation for a great Injury done by one Jones at the Whorekill. And another Letter (in October) from Governor Lovelace to Captain Carr, taking Notice, that the Marylanders had forcibly posse'sd themselves (then) of the Whorekilles, and of the Goods of some of the Inhabitants.

Attack upon the Whorekilles. Which they did not keep the Possession of long, as you'll see.

1673. In April Governor Lovelace at New York made two Grants of Lands at Newcastle. — And the Governor and Council order a Commission to be sent to the Officers and Magistrates at Delaware, to go to the Whorekill, to keep a Court in the King's Name, enquire of all irregular Proceedings there, and to settle the Government, and Officers there, as formerly, under the King's Obedience, and the Duke's Protection. — And in June the Governor and Council raised the Value of the Coin at Delaware (Wampum) one Third, in order to encrease the Quantity of it.

But, it being War with the Dutch, and many Dutch Inhabitants left there.

Dutch Entry. It appears by Dutch Records in the Secretary's Office in New York, that a Dutch Squadron came off of Hudson's River in New York the 12th of August, held a Council of War there, appointed Captain Anthony Colve, a Dutch Captain of Foot, to be Governor General, and in Chief Command, over this Conquest of New Netherland, with all its Appencies, beginning where? From Cape Henlopen, or South Side of the South, or Delaware Bay, and 15 Miles more Southerly, (with the said Bay and River included) as the same in former times, by the Directors of the City of Amsterdam, and afterwards by the English Government, in the Name, and under the Duke of York, was posse'sd. — Next appears a Commission, granted 19th September, appointing Peter Alricks to be Commander and Sheriff in the South River of New Netherland, last called Delaware, beginning from Cape Henlopen, and as much more Southerly as the same heretofore, in the time of the Dutch Government, was posse'sd and enjoyed, up to the Head of said River. — And a Grant of 500 Acres of Land South of Apoquinimi River to two Men, from this Dutch Governor Captain Colve, at New York.

Cape Henlopen. But this Dutch Possession was soon over.

Treaty between England and Holland. For on 25 February this Year, by the Treaty of Peace concluded at Westminster, all Countries taken by either from the other, were to be restored to the former Owner. King Charles the 1st re-granted the same Tracts, with the Appurtenancies, and in the same Words, as was done 11 Years before in 1663. to the Duke of York.

1674. June 29. But those Words, nevertheless, had a fuller Meaning, now, for these Lands in Delaware had been most clearly held, by the Duke himself, for 11 Years, as Appurtenancies to New York, besides that the Dutch had held them, as such, clearly from the Year 1629, before that.

New Grant to the Duke of York. Note well. This New Grant to the Duke of York contained an express Power to him to expel all Persons as should, without his Licence, attempt to inhabit within the Limits of the Territories thereby granted.

In two Days after this New Grant the Duke of York appointed Edmond Andros, Esq; his (third) Governor, and upon 31 October 1674. the Dutch delivered up to him New York.

In two Days after that, he, by Proclamation, re-established the Magistrates at New York, and also at Delaware River, except Peter Alricks, who had proffered himself to the Dutch, and had acted very violently as their Chief Officer.

And Governor Andros, instantly, by an Order, appoints a Sheriff, and a Secretary at Delaware, and appoints Persons to take Possession of the Fort there, or any Part of Delaware, and to remain in Command there. Appoints two Persons to receive Quit-Rents, Customs and Excise, as established by the Duke before the coming in

2

3

in of the *Dutch*, and to return to the Governor an Account of all other Matters relating to the Revenue. — And afterwards granted regular Commissions to them, for those Purposes. — He appoints those who had been in Office before the *Dutch* came in in July 1673, to be Commissaries in *Newcastle* and Dependencies, to act according to the Laws used amongst them during the Duke's Government in Governor *Nicolls* and Governor *Lovelace's* Time. And impowers them to elect a Constable, in each of the Towns, as directed in the Laws establish'd by the Duke. Appoints five Justices for *Newcastle*, and five more for the River. And particularly grants a Commission on 6 November to two Persons, *int. al.* to reposess and settle the King's Subjects in their just Rights at the *Whorekill*. — On 11 November he grants a Commission at *New York*, to administer the Oaths to the Commissaries at *Newcastle*, to those of the Court up the River, and to those at the *Whorekill* in the Bay. And on 9 Jan. Governor *Andros*'s Letter of Thanks to his Commissioners, for having settled the Magistrates — in *Newcastle* — up the River — and at the *Whorekill*. [So that we see Lord *Baltimore* did not keep Possession of the *Whorekills*. — His Attack was about October 1672. The *Dutch* entered July 1673, and held *New York*, and *Delaware* too, till 31 October 1674. And the Duke of *York* had re-settled the Magistrates there before 9 Jan. 1674.] — Governor *Andros* goes on, confirms judicial Proceedings, gives Captain *Cantwell* Orders about the Fort at *Newcastle*, appoints him Surveyor for the whole River and Bay, orders him to give new Comers a reasonable Quantity of Lands, orders an Execution upon a legal Judgment, gives him Directions about the Militia, and particularly as to the Militia at the *Whorekills*, where he says their Number is too small for a Company yet, but *Cantwell* may appoint a Lieutenant and Serjeants to command there. Sends for an Account of the Customs, to be remitted to the Duke's chief Collector at *New York*, &c.

1675. The Transactions of these Years by Governor *Andros* and the Council at *New York*, relating to *Upland*, *Newcastle*, *Delaware* River, and Bay, are most excessively numerous; the shortest Abstract that could be framed of them takes up very near Nine Sheets of the printed Brief, from fo. 43 to 51, both inclusive, and contain very many Instances of every Sort of Acts of Ownership, Proprietorship, Jurisdiction and Government over that whole Country, to the utmost Degree, that can enter into any one's Imagination, *viz.* Orders to make in the Duke's Name, and Purchases actually made, of many Parcels of Lands from the *Indians*, infinite Numbers of Grants of Lands on the West Side of *Delaware*, surrounding every River and Creek mentioned in our General Map, from up as far North as *Skuilkill* River, (which is as high as the City of *Philadelphia*) down South to the *Whorekills*, South of the *Whorekills*, 10 Miles South of the *Whorekills*, on *Reborth* Bay, South of *Reborth* Bay, and four Miles South of *Reborth* Bay. — Granting Lands at the *Whorekills*; and yet said to be seven Miles distant from the *Whorekill* Town, which shews the *Whorekills* was a County or District. — Commissions to the Justices and to the Courts, at *Uplands*, at *Newcastle* and Dependencies, at *Whorekill* and Dependencies. — To Clerks of the Court there. — To Sheriffs, To Surveyors of Lands. — To Receivers, and Collectors, and Sub-Collectors, of the Customs, and Clerks of the Permits and Customs. — Settling the Duty and Customs. — To Receivers of the Duke's Quit-Rents. — Prohibiting Exportation of Corn. — Prohibiting distilling. — Ordering stray Cattle there to be seized to the Duke's Use. — Commissions of Oyer and Terminer granted to the Magistrates there. — Special Courts held there by Governor *Andros* in Person, when he went thither. — The Limits of the Jurisdictions of the several Courts settled. — Settles them as a Court of Sessions. — Gives them the Power of a Court of Equity. — Directs what Causes shall be try'd by Juries, what without. — Where their Judgments shall be final, and where Appeals shall be allowed. — Appoints the Days and Times when each Court shall be held. — And the *Whorekills*, and other Places, made subordinate to the Court at *Newcastle*. — And that at *Newcastle* made subordinate, and Appeals reserved from it, to *New York*. — Many Determinations, on such Appeals, and Writs of Error brought up to *New York*. — Liberties granted to the Court at *Newcastle* to prove Wills, and grant Administrations, in small Cases; but above 20*l.* must apply to *New York*. — Bills in Equity filed at *New York*, and Orders to injoin legal Proceedings thereon at *Newcastle* and *Whorekills*. — Changing the Name of the *Whorekills* to *Deale*. — Pafies to particular Persons to go from *New York* to *Delaware* Bay, and the South Parts thereabouts. — Permits to Ships to sail quite up that River. — Directions about Trade. — To prevent Interlopers. — About Customs. — To observe the Book of Laws establish'd by the Duke. — Appoints several Commanders in *Delaware* River and Bay. — A Captain and Ensign of the Company of Foot at the *Whorekill*. — Sends Supplies of Musket Bullets to *Delaware*. — Directs the Manner of raising Land-Tax, Poll-Taxes, and publick Levys. — Orders about the Soldiers and Militia. — the Block-house — the Weigh-house — the Store-house — the Prison — the Stocks — regulating Weights — the Vendu Master, and his Fees — the Surveyor of Lands, and his Fees. — Orders a publick Seal for *Newcastle*. — Sometimes remits Quit-Rents for three Years, for Encouragement. — Other Times orders, that those who don't settle in Time, or who don't pay their Quit-Rents, shall forfeit their Lands. — Gives Direction to the Courts there to order Surveys of Lands for People, but those to be sent up to him to grant the Patents. — Giving the Court and the Officers at *Newcastle* a Jurisdiction over Persons and Things on the East Side of *Delaware*, which they exercised. — Orders about the *Indians*, and some Murthers they had committed, and some Disturbances apprehended from thence, &c. &c. &c. — Also several Deeds from privat: Persons, wherein they write themselves of *Delaware*, belonging to *New York*, under the Duke of *York*.

There are two Things worth particular Notice, *viz.* that on 24 June 1680, the Duke of *York* appointed Mr. *John Lewin* his Agent, to enquire into the Estate, Rents, and Revenues there, and the Duke's Commission to him is entered, not only in the Records in the King's Province at *New York*, but also in the Records of every one of the three Lower Countys, now called *Newcastle*, *Kent*, and *Suffix*.

The other Matter is, we have Governor *Andros*'s Letter, recorded at *New York*, and also at *Newcastle* and *Suffix* Countys, of the 15 November 1680, that he had obtained the Duke's Leave to go Home, and did design to leave Captain *Brockbols* for his Lieutenant at *New York*.

King *Charles* the II^d granted *Pensilvania* to Mr. *Penn*. And by the Papers which preceded that Grant, for nine Months together, printed in the Brief, fo. 51. 52. 53. it appears he petitioned for that Grant in lieu of *Debts* then due to him, and his Father, Sir *William Penn*, from the Crown. — — — That the Duke of *York* was then known to enjoy *New York* in Propriety, and to be posses'd of Lands on the West Side of *Delaware* River; and therefore, the Duke and his Agents were, many times, sent to, and heard, before the Grant was made to Mr. *Penn*; and the Board of Trade (then consisting of the whole Privy Council) told Mr. *Penn* he must apply to the Duke of *York*, and get his Consent. — — — And that the Duke's Agents, at first, insisted that Mr. *Penn* should be confined 20 or 30 Miles, but, at least, 12 Miles, distant from *Newcastle*. — — — And took Notice, that *Newcastle* was Northwards, and distinct from *Maryland*. — — — That my Lord *Baltimore* and his Agents were also sent to, heard, and consulted on, and had Copies of, the intended Grant, and the Bounds; proposed many Restrictions and Alterations therein, particularly, that Mr. *Penn*'s Grant should be confined, Southerly, to the *Susquehannah* Fort. — — — And that, after very great and serious Consideration, Mr. *Penn*'s Charter was at last granted, with its particular Bounds, which are sensibly to be expres'd after this manner,

The River *Delaware*, and a Meridian Line from the Head of it, to be the *Eastern* Bounds of *Pensilvania*.

To extend five Degrees in Longitude, *Westwards*.

The Beginning of the 43^d Degree, to be its *Northern* Bounds.

And its *Southern* Boundary, to be, by a Circle drawn at 12 Miles Distance from *Newcastle*, Northwards and *Westwards*, unto the Beginning of the 40th Degree; and then, by a strait Line, *Westward*, to the Limit of Longitude above-mentioned.

In this Year there are several Acts done, and Grants and Orders made, by the Lieutenant-Governor *Brockbols* and Council, at *New York*, relating to *Newcastle*, and the Lower Countys; for, as yet, Mr. *Penn* had no Grant for them, (tho' he had for *Pensilvania*.) — Surveys made of Lands, by the Courts in the Lower Countys, and those sent up to *New York* for Confirmation. — — — And the Duke of *York*'s Order, that *Brockbols* should not remove any of the Magistrates, either at *New York* or Dependencies. — And Lieutenant *Brockbols*'s Order to a Person to collect the Quit-Rents in *Delaware* River and Dependencies, as also the former Arrears, in that Part which was now *Pensilvania*, touching which (says Captain *Brockbols*) I have writ to Governor *Markham*, the Governor of *Pensilvania*. — — — But, (says Captain *Brockbols*) as to your Magistrates Desire, to join to lay out the 12 Miles above *Newcastle*, it is not within their Cognizance, but if necessary, and desired here, shall appoint as shall be proper. — — — And several private Deeds between Parties, wherein they write themselves of the Lower Countys in the Province of *New York*.

1682. Many private Deeds recorded, wherein the Parties write themselves of the Lower Countys in the Province of *New York*.

August 21. The Duke of *York*, reciting that he had before signified his Assent to the Committee of Plantations, for the granting the Province of *Pensilvania* to Mr. *Penn*, does now release that Province, and all his Right and Title thereto, unto Mr. *Penn* in Fee.

24. By two several Indentures of Feoffment, the Duke of *York* conveyed to Mr. *Penn*, in Fee, the Town of *Newcastle*, and the Tract of Land within the Compass of, 12 Miles about the same, also the other Tract of Land from 12 Miles South of *Newcastle* to the *Whorekills*, alias *Cape Lopen*.

And in each of those Feoffments the Duke appointed Attorneys to give Livery and Seisin.

And covenanted to make and procure further Assurances.

October 27. Mr. *Penn* first arrived in *America*, and, the very next Day, Livery and Seisin was given him of the Town of *Newcastle*, and the South Tract also. — And the Tenants attorned to him.

And one of the Witnesses to the Delivery of Seisin is still alive, and examined in the Cause, and proves it.

28. The Day after, Mr. *Penn* summons a General Assembly, both for *Pensilvania* and the Lower Countys jointly, and in his early Summons, the 2d Day that he arrived there, expressly says, the Duke had granted him to *Cape Henlopen*, — He immediately issued Commissions to the Magistrates and Officers in all the Lower Countys, whose Commissions appear in the Records.

November 21. The Governor and Council of *New York* issued a Proclamation, to discharge the Magistrates of the Lower Countys from any further Obedience to the Duke of *York*, and to require their Obedience, now, to Mr. *Penn*, the Duke's Grantee.

December 6. The General Assembly of *Pensilvania*, and the Lower Countys, jointly, pas'd their first Law, being an Act of Union to unite the Lower Countys to *Pensilvania*, as of the proper Territory thereof, and describe the South Extent of the same to be, down to the South Cape, commonly called *Cape Henlopen*, and by the Proprietary and Governor now called *Cape James*.

18. The Governor of *New York* writes to Sir *John Werden*, that Mr. *Penn* has been posses'd of what the Duke granted to him, and now, (if ys he) I fear what is left of this Province will not be able to defray the Charge.

25. Mr. *Penn* appointed New Justices, and limited the Bounds of their Jurisdiction, particularly of *Suffex*, to extend Southwards to *Affawarmet Inlett*, reputed and accounted *Cape Henlopen*, which said *Cape Henlopen* I will, from henceforward, have called by the Name of *Cape James*.

26. And, the next Day, he orders them to lay out 10,000 Acres for a Manor for the Duke of *York*, to lie on the North Side of *Affawarmet Inlett*, as near to *Cape James* as might be.

Accordingly, in some very few Months, a Manor was laid out for the Duke, another for Mr. *Penn* himself, and eight more Tracts for eight other Persons, the Lands for some of which were then bought of the *Indian* Natives, precisely down to our *Cape Henlopen*. — As by the Returns, Surveys, and Acts of Court appear.

And, from that Hour to this, have Mr. *Penn*, and his Family, been in constant and continual Possession of the three Lower Countys.

March 22. The Duke of *York* obtained a Grant, from the Crown to himself, of the Three Lower Countys by Name; and, to shew he intended it for Mr. *Penn*, in pursuance of his Covenants for future Assurance made not seven Months before, we have the original Grant under the Great Seal.

Another more extensive Grant was passing, (if not pas'd) under the Great Seal, of the said three Lower Countys, in a more clear, comprehensive manner, but we don't find it was enrolled.

A long Contest, and a dozen Hearings, between Lord *Baltimore* and Mr. *Penn*, before the Committee of Plantations, about these Lower Countys — who resolve, October 17. 1685. that the Tract of Land in Dispute did not belong to Lord *Baltimore*, but were doubtful what were the Boundaries of that Tract? — Heard the Partys, several times, afterwards, with Relation to those Boundaries. — And, at last, agreed that, from the Latitude of *Cape Henlopen*, to the 40th Degree, a Line should run up the Peninsula, to divide the Lands that lay between the Sea, the Bay, and the River of *Delaware* on one hand, and the Bay of *Cape Lopen* on the other.

1708. Lord *Baltimore* had the Hardines to petition to set aside that Order, but his Petition dismis'd.

Again petitioned, and positively asserted he had never been heard in 1685. obtained a Hearing thereon, before the Queen in Council. His Petition falsifyed by the Books produced, and again dismis'd. And the Queen, assited amongst others by the then Lord Chancellor, by both the Chief Justices, *Holt* and *Trevor*, and the Master of the Rolls, ordered, that the Order of 1685. should be confirmed in all its Points, and be forthwith carried into Execution.

1709. May Lord *Sutherland* petitioned for a Grant of the Lower Countys; It was referred to Sir *Edward Northey* and Sir *William Thompson*, Mr. *Penn*'s Agents were heard, and this very Lord *Baltimore* was a Party, and was heard to that Report. — They staled Mr. *Penn*'s Title, and the supposed Defect in it: But as to Lord *Baltimore*'s Title, they reported, that that had received a full and final Determination in 1685. and that such Order had been confirmed in 1709.

1717. My Lord in the present Agreement agreed that the South Bounds of the Lower Countys should be by a Line to be drawn West from *Cape Henlopen*, South of *Cape Cornelius*, at the Eastern Part of the Peninsula towards the Main Ocean. Observe the three-fold Description of the Place.

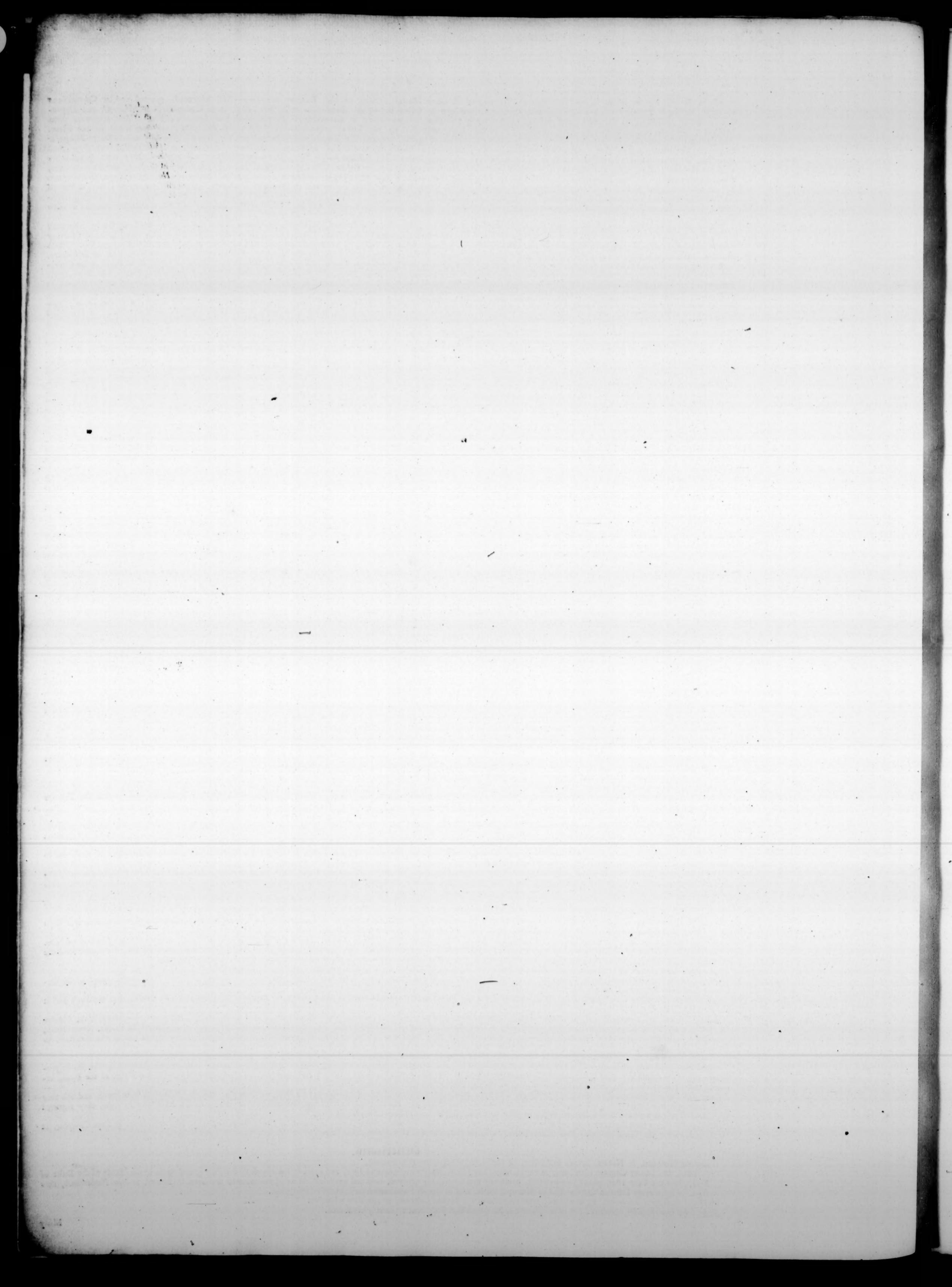
Reflections.

If any one Place can, in Nature, by any Possibility, be considered as appurtenant to another,

Then, the Lower Countys have been, in the Hands of the *Dutch*, and of the Duke of *York*, and again in the Hands of the *Dutch*, and again in the Hands of the Duke of *York*, from the Year 1629 quite down to 1682, constantly and continually enjoyed, held and governed, as an Appurtenant to the Great Settlement at *New Netherland*, now *New York*, in every Instance that the Wit of Man can devise, and in repeated and numerous Instances of every sort.

My Lord *Baltimore* has never, for one Hour, been posses'd of the Lower Countys, at any time whatever.

They have been judicially declared not to be granted to him, and that Judgment repeatedly confirmed.



Many Acts of the whole Legislature of *Maryland* repeatedly declare the Lower Countys to be the Territorys belonging to *Pensilvania*. They could not be granted to him in 1632, for the Crown gained them, by Conquest, from an Enemy, but in 1663, and had them confirmed by Cession in 1667; and if they had been formerly in the Crown, they had been granted away by the Crown to the Council of *Plymouth*.

The Crown again lost them, in War, in 1673, and afterwards, had them ceded again, by Treaty, in the End of the same Year.

The Duke of *York* posseſſ'd, at times, from 1663. to 1682, but, undisturbedly, from 1674. to 1682.

Mr. *Penn* entered, by Feoffment with Livery and Seisin, in 1682.

From that Hour to this, he, and his Family, have continually posſeſſ'd, *above threescore Years together*.

He has improved, beyond Thought almost. And this, without one Shilling Expence to the Crown, or the Publick, in any Shape whatever.

Poffeſſion and Improvement was *always* thought a Title in *America*.

Was so reported by the late and present Chancellors in 1732.

And we hope Mr. *Penn* (tho' he has almost ruined his Family by it) has done such a Service to his Country, as to merit the like Rule to be obſerved in his Cause.

Maps.

Smith's Map of Virginia, and the Peninsula. Printed in 1612. 1624. and 1625.

Lord Baltimore's Map of Maryland. Printed in 1635.

Dutch Map of New Netherland. *Vide* 1657. April 12. Whereby it appears that that Map (which called a Place, at the time of making it, *Fort Casimir*) muſt, therefore, have been made before 1657.

Ogleby's three Maps, of Virginia, of Maryland, and of New York. Printed in 1671.

Manuscript Map of Maryland, at the Board of Trade, which, not naming *Pensilvania*, muſt, therefore, have been before 1680.

*Surveys of the Duke of York's Manor, of Mr. *Penn's* Manor, and of 8 or 10 other Parcels of Lands*, quite down to our Cape *Hinlopen*, returned in the Years 1683, and 1684.

Swedish Map of New Sweden, now *Pensilvania*, printed in 1702. (but not proved in the Cause.)

Lord Baltimore's written Map, which he used and markt in 1731, in order to the Articles (not produced or proved by him, but only a Copy of it, to avoid shewing what Notes there were on the Original.)

The Plaintiffs written Map, which they then used and markt in 1731, proved in the Cause.

Our General Map, made up in 1740, proved in the Cause.

The Defendant's own Witneſſes, *viz.*

Hugh Jones, who ſwears to his Opinion of the Extent of my Lord's Charter, he ſays, (*Lib. G. fol. 5.*) That he himſelf, and others, have taken *Observations*, and have run *Line*s, to diſcover where the Latitude of 40° falls.

William Rumſy, who alſo ſwears to his Opinion of the Extent of my Lord's Charter, he ſays, (*Lib. G. fol. 137.*) That he affiſted as a Surveyor in running the *Line* for Temporary Jurisdiction, puruant to the Order in Council.

Thomas Hynſon Wright, who likewiſe ſwears to his Opinion of the Extent of my Lord's Charter, he ſays (*Lib. G. fol. 259.*) that he was ſent to review the Cape of *Delaware* and the Sea-fide; that he traversed the Lower Countys, in order to *plat* the fame, and diſcover where the Tangent Line would run.

And *John Miller* (*Lib. G. fol. 272.*) ſwears he has taken an *Observation*, at the Place markt Cape *Cornelius*.

Nevertheless, notwithstanding all theſe Opportunities, my Lord ſo much affects Darkneſſe and Obscurity, that he has not proved any one Map, or any one Line, what-fover, ancient or modern, of any one thing in the whole World.

As to the ſeveral Lines for Lord Baltimore's (General) North Boundary.

There was granted to him only a Part of the mere Peninsula itſelf, not any part of the *Main Continent*. That part granted him was bounded Eaſtward by the *Ocean*, only.

And extended *usque ad ſuic Part of Delaware Bay* as lay under the 40th Degree.

The Mouth, and moſt Southern part of *Delaware Bay*, at our Cape *Cornelius*, did lie under the 40th Degree.

Ergo, no part of his North Bounds of his Charter go more North than our Cape *Cornelius*, at the Mouth of *Delaware Bay*.

But he, having Nobody then ſettled behind him,

Drew his North Boundary, by a Line upon his then printed Map, exaſtly at the Head of *Chesapeake Bay*,

Defiſed that *Pensilvania* might be bounded, Southward, by the *Susquehanna* Fort, and in

Run a Line *ex parte*, without Mr. *Penn's* Knowledge, from the Mouth of *Ozoraro*; (being the place where the Fort stood) and run it Eaſt according to the *Compaſſ*; which, (if he had been intituled ſo far) was running it vaſtly to his own Disadvantage; for at the Western End of that long Line of 5 Degrees in Longitude it would have run down, too much to the South, by above 28 Miles.

And then, below that Line of 1683, builds his little Log-house of 2 l. or 3 l. Coſt.

Now we have given him 4 Miles (even when at the River *Susquehanna*) above that highest Claim.

And we have run his Boundary with the Variation too.

So that, conſidering it is to run for 5 Degrees of Longitude, that will make a Gore of 5 Degrees long, and in Width from about one Mile at the Eaſt End, to the Width of above 28 Miles at the West End. The ſquare Miles in which are no leſs than 3770.

Surely this is *A Confederation*.

As to my Lord's great Ignorance.

As to the ridiculous and false Pretences that Lord *Baltimore* was (in general) ignorant, relating to the Affairs of his own Province, and particularly of his own Bounds, or of our Title to the Lower Countys, or that he was any way ſurprized in the Agreement,

(That he was not deceived about *Cape Henlopen*, I reſerve to a ſeparate diſtinct Head.)

The Lord *Baltimore's* first Oppoſition to Mr. *Penn* began, before the Privy Council, and has, from time to time, ever ſince, continued, down to this Hour; now above Threescore Years, and therefore fit to have an End put to it. It is not quite a New Thing, just now ſtarted up.

It continued, and very many Hearings thereon, during these two whole Years, and at length was flatly adjudged againſt him, by a final Order in Council, that he had no Title to the Lower Countys, and that his Grant did not extend to them.

He petition'd to ſet aside that Order, upon groſſ, false Suggeſtions, but his Petition was diſmiſt, by Order in Council.

Not contented, he again petitioned, and ſuggeſted he had never been heard in 1685, had a full Hearing, perſonally in the Queen's Preſence, and an Order made by the Queen in Council, affiſted (amongſt others) by the Lord Chancellor, by both the Lords Chief Juſtices *Holt* and *Trevor*, and by the Maſter of the Rolls, by which Order his Petition was diſmiſt, and the Order of 1685 was confirmed in all its Points, and was ordered to be carried forthwith into Execution.

The laſt Lord *Baltimore* died, and this very Defendant came into Poſſeſſion of *Maryland* (now 28 Years ago) time enough to know ſomething of his Country.

The *Maryland Law-Book* (proved in the Caufe) ſhews that then, and ever ſince, the Asſemblys have been held under this preſent Charles Lord *Baltimore*.

Was the Day of the remarkable Report made by Sir Edward Northey and Sir William Thompſon upon the Earl of *Sutherland's* Petition, for a Grant of the Lower Countys. In which Report Mr. *Penn's* Title to the Lower Countys was moſt particularly and minutely ſet forth, and the ſuppoſed Defects that were therein. And to which Report this Lord *Baltimore* was ſummoned, and heard, and was a Party; and the Attorney and Solliſitor reported exprefly that, as to his Title, it had received a full and final Determination upon the Diſpute which began in 1683.

This very Lord *Baltimore* made one former Agreement with Mrs. *Penn* the Executrix, which is charged in our Bill, and admitted by his Anſwer.

Mr. *Logan* ſwears, that my Lord had (then) the laſt and faireſt *Manuſcript Draught* before him, of the Peninsula, that he had ever ſeen. And that, by his Discouſe, then, he leſſened to be very well acquainted then with the Provinces of *Maryland*, *Pensilvania*, and the three Lower Countys. And then argued (pray obſerve it) that as the Lower Countys were, as he pretended, within the Limits of the *Maryland Patent*, it could not but much strengthen Mr. *Penn's* Title, if my Lord was to releaſe them to him.

Lord *Sutherland* again petitioned about the Lower Countys, and my Lord *Baltimore* again heard.

In the beginning of this Year he defiſed *Paris* to tell the now Plaintiffs, he wifhed their Diſferences were accommodated.

He defiſed his own Council, Scruſtant *Winne* (who ſwears he had long been concerned for him in his *Maryland Affairs*) to meet the Plaintiffs, to try if they could come to an amicable Agreement.

Were the two firſt Meetings between the Parties.

He then produced his Map.

He ſays he had had that Map from his own Agents.

He ſays that he had had it, many Years before that time by him.

He ſays that he took that Map, as the firſt that then came to his Hands.

My Lord demanded ſuch unreasonable Terms, that we would not at firſt comply, but the Treaty broke off.

Governor *Ogle* ſwears my Lord told him that we would not do any thing by fair means, and that he was reſolved he would have a Suit.

Paris ſwears the Plaintiffs complained of the heavy Expences they had before undergone, in these Contests.

He petition'd the King, told him that there had been ſeveral Orders in 1685, 1708, and 1720, and yet, the Diſtinction was not made; and, for want thereof, his Tenants would not submit to his Government, nor would pay him any Quit-Rents, and, therefore prays the King to order us to join with him in ſettling the Diſputes.

Another Contest in Council was the thing we had declared our Dread of the Expence of.

This, and his own Letter thereupon, brought round the Meetings again.

The Parties met, and the Plaintiffs verbally agreed to his own Demand, which (Note) conſiſted ſingly how far his general North-Boundary ſhould go, in the Parts where the Lower Countys did not make his Northern Boundary.

His Counſel concerned in his *Maryland Affairs*, ſwears he was at ſeveral Meetings.

His Governor *Ogle* ſwears he was at one.

His Solliſitor *Sharpe* ſwears he was at two.

And ſwears that Mr. *Beake* was also preſent (who was my Lord's Secretary.)

It's proved that no one of the Plaintiffs had ever been in *America* then.

He produced a Sheet of Paper, all of his own Hand-Writing, containing all the Descriptions he would have to deſcribe every Part of the then Agreement.

He admits the Draught was deliver'd over, (and it was not executed till 10 May 1732; Nine Months afterwards.)

Mr. *Sharpe's* Letter proves it was, this Night, ſent to my Lord himſelf.

Mr. *Sharpe* then laid it before Councillor *Winne* to ſettle for my Lord (that very Council who had long been concern'd in his *Maryland Affairs*.)

The Draught return'd back, with a new Demand, whereas the Circle was to be 12 Miles, which, as Geographical Miles, was indeed 14 Statute Miles diſtant from New-castle, they ſhould be mentioned as 12 Statute Miles — [now he ſays, as 2 Miles only.]

A Meeting of all Parties at his Houſe, and that new Demand, with Diffiſulty, agreed to.

Then he would have his Map graved; not ours.

He would have his Mathematician *Senex* graved it; not ours.

He would have his Mathematician's Opinion upon the Articles.

The Plan and the Articles laid, by his own Solliſitor, before ſuch his own Mathematician.

He delivers over a further written new Demand of a Clause, to prohibit Trade, by Means of Rivers down into his Bay.

Paris ſwears that he then declared that His People insisted on that Clause, and, therefore, he muſt have it.

That also agreed to.

He admits that his Mathematician did give his Opinion in Writing upon the Articles.

May 10.

And did grave the Plan.

And that there is no material Difference between his own Plan, and that upon the Margin of the Articles.

He then (and not till then) executed the Agreement.

Mr. Taylor swears that my Lord, at that time, declared that his People in Maryland had writ to him that he might have had better Terms than those; but that, he was glad it was ended, was very well satisfied, would faithfully execute the Agreement, and hoped to see Mr. Penn in America to put the last Hand thereto.

Could this Man be ignorant of this Affair, or of our Title, or of his own Bounds? Was he hurried, surprised, or unassisted in this Agreement? Or did he force us into it? Dictate his own Terms? Oblige us to comply? Graft upon us, encrease his Demands, from time to time, have all those *After-thoughts* likewise granted?

More particularly, with respect to his ignorance of, and being deceived in, our Title to the Three Lower Counties.

How is it possible, after what is before observed, that he should be ignorant of that? Do the Articles recite any other Title than what we had?

Nay, do they recite any other than what is mentioned in the Attorney and Sollicitor-General's Report of 1717, to which he had been a Party in 1717, (15 Years before these Articles.)

But what has he to do with our Title to the Lower Counties?

If after this dear Purchase from him, of his Pretensions thereto, we should still have a defective Title, the greater is our Misfortune, but it does not relate to him in the least.

For he conveys the Lower Counties to us, not we to him.

And, if this Conveyance, also, won't make us a compleat Title, still, it is but Equity that we should have from him what we have thus dearly bought, and given him such a Consideration for.

But after all, does he, or does he not, mean that he was deceived in our Title?

For, according to Custom, he has sworn both Ways in his Answer, and indeed twice over, each of the several Ways.

Therefore, are we to believe him, in fol. 65, where he absolutely denies that he knows or believes, or ever heard that we, or any under whom we claim, ever could make him any legal Right or Title to any Part of the Three Lower Counties, or that he ever could derive any Title from us; we, or those under whom we claim, never having had any Right or Title to any part of the three Lower Counties to his Knowledge or Belief.

Or, are we to believe him, in fol. 206, where he swears he always looked upon every Part of the three Lower Counties to be of Right belonging to his Province; and never acknowledged or believed the Plaintiffs had any Right or Title thereto whatsoever.

Or, are we to believe him, in fol. 234, where he apprehends and believes it now plainly appears that the Plaintiffs, by the Agreement, endeavoured to impose upon, and deceive him in manner aforesaid, and by pretending to give him what was not theirs to give, and which they had no Right or Title to, being comprised within the Charter of Maryland.

Or, are we to believe him, in fol. 451, where he, in concluding the Prayer of his Answer as I may call it, winds up thus, That as he was imposed on in the Agreement, both with regard to the Scituation of Cape Hinlopen, as likewise with regard to the Plaintiffs pretended Titles to the said Counties, The Defendant at the time of entering into the Agreement being induced to believe that the Plaintiffs could have made him a good Title to such Parts of the three lower Counties as might have fallen to his Share, but which he has, since, by Papers which have been transmitted to him from America, and otherwise, been plainly convinced they could not, therefore, hopes the Plaintiffs shall not have any Relief.

He that never so much as heard we had any Right to the Lower Counties,

He that always believed they were his own Right, and never believed we had any Right or Title whatsoever.

Could not, at any one time, be induced to believe we had a Title.

Under this Head I would only add, that the Defendant at fol. 222, says that he did not intend, by drawing the Lines upon his own Plan, to exclude from himself, or to include to the Plaintiffs, any thing, but what he then apprehended the Plaintiffs had good right to, either in Law or Equity; Whereas he is, since, convinced the Plaintiffs had no such right to the Three Lower Counties.

Now we, on the contrary, say, that he then insisted that he himself, not we, had a right to them, and yet, as such, did most clearly exclude them from himself, and include them to us.

And we'll prove that Fact, under his own Hand, by his own Proposals. For, therein, after that he had provided for drawing Lines to exclude the three lower Counties from himself to us, He immediately adds, in Artic. 4. these Words of his own Hand-writing: "The Lord Baltimore to quit all Pretensions to the three lower Counties, known to be at present comprised within the Limits aforesaid, that is to say, within the 12 Miles Circle of Newcastle and the North and South Line drawn as aforesaid on the West, and the Bay of Delaware on the East."

Old Cape Henlopen.

The great Instance of Deceit and Imposition, which the Defendant insists is put upon him, is, by the placing or describing, in his own Map, Cape Hinlopen too far South, down to the Sea, below Cape Cornelius; For that, as he says, there is no such a thing as a Cape there, but the true Cape Henlopen, anciently and originally so called by the Dutch, and so described in their Maps, was at the Place we call Cape Cornelius, at the very Mouth of Delaware Bay, and, there, it was that the South Bounds of the lower Counties should have been.

Surely, the Defendant, if this Pretence had been true, might have found some one single ancient Map, that would have given a Colour to it. But he has not proved any one.

His own Witnesses (and his own Examinations of them) happen to say that Cape Hinlopen anciently was, exactly where his Map places it, and that, not only that particular Place was called Cape Hinlopen, but all the Country, round about it, was called Hinlopen too.

But the Matter does not at all rest here.

For, as his Pretence necessarily infers that the Dutch Settlement, or the lower Counties, did not extend Southwards, below the very Mouth of the Cape; if so, they could not have an Inch of Land to the Sea.

Wherefore I shall now give you an Extract, from many Scores of Parts of the Old written Evidence, which absolutely falsify his Pretence, and shew, that there was a Place called Cape Hinlopen, exactly where his Map placed it; that the Dutch anciently called it so, and so described it in their Maps; That they purchased thither, and they, and the Duke of York, and Mr. Penn, and their Tenants, from time to time, settled thither precisely.

The very first Record we have from America, is, Mr. Godyn's Purchase from the Indians before the Dutch Director and Council at New Netherland; whereby the Dutch purchased the Lands from the Indian Inhabitants on the South Corner of the Bay of the South River, situate on the South Side of the said Bay called by the Dutch the Bay of the South River, stretching in Length, from Cape Hinlopen, to the Mouth of the said South River, about 8 large Miles.

No, no, says Lord Baltimore, Cape Hinlopen and the Mouth of the Bay called the South River, were anciently the same identical Spot.

But if the Original Natives knew, or the Dutch Purchasers knew, they say, and that two or three Years before ever my Lord Baltimore's Grant was made, that they were 8 Leagues asunder.

The Dutch Possessions there had been all held, at first, for their Dutch West-India Company, but now, one particular Part of such their Possessions was transferred to the Use of the City of Amsterdam, and by the Conveyance of this Date, made by the Director and Council of the New Netherland, unto Peter Alricks, Director and Commissary under the City of Amsterdam over their Colony in the South River. They transfer to him the Fortres Casimir, and expressly mention that it was then called New Amstel.

Wherein Fort Casimir is still called Fort Casimir in that Map; Ergo, the City of Amsterdam had not bought it, nor had not called it New Amsterdam, when this Map was made; and that fixes this Map to have been precedent to 1657. And this ancient Map lays down Cape Cornelius at the Mouth of the Bay, and Cape Hinlopen down to the Sea, as another distinct Cape, a great way South of it.

Governor Andros appointed a Jurisdiction of Scout and Commissaries at a Place called the Whorekills (which was ever after continued); Therefore that must be a District or County of some Extent, and we shall by and by see the vast Extent of that District.

Ogilby, King Charles the Second's Geographical Printer, prints his America, and amongst other Maps therein contained, one of New Belgia now called New York, Here he lays down the Bay of Delaware, Cape Cornelius for the Western Cape that formed the Mouth of that Bay, and, below that Cape, Southwards, to the Sea, another distinct Cape, viz. Cape Hinlopen.

The Dutch, with Squadron of Ships, retook the New Netherland, and the Officers of that Squadron thereupon appointed Anthony Colve, to be Governor General of that New Conquest; and how do they describe the Bounds of it? Why thus, New Netherland with its Appendencies and Dependencies, beginning from Cape Hinlopen, or South Side, of the South or Delaware Bay, and 15 Miles more Southerly, (with the said Bay and South River included) as the same, in former times, by the City of Amsterdam, and afterwards, by the English Government, in the Name and under the Duke of York, was possessed; and further, from the said Cape Hinlopen, along the Main Ocean, to the East End of Long Island, &c.

The Dutch General, Governor Colve, immediately after, appoints Peter Alrick, to be Commander and Sheriff in the South River of New Netherland, last called Delaware; and how does he describe that particular subordinate Part of his Government? Why thus, beginning from Cape Hinlopen, and as much more Southerly as the same heretofore, in the time of the former Dutch Government was possessed and enjoyed, to the Head of the said River.

That Dutch Possession was very short, for it was yielded again, by Treaty, in the February following to England (indeed in Exchange for Surinam). And then New York, with its Appurtenances, was again granted to the Duke of York, who appointed Colonel Andros for his Lieutenant Governor there.

Governor Andros, at New York, grants 600 Acres to William Roads, at the Whorekill on the West Side of Delaware Bay, called Rehobah, lying upon Rehobah Bay, and bounded by other Land granted to John Avery. — Note, Rehobah Bay the nearest Part of it is 5 or 6 Miles South below the Whorekill Town.

The same Governor makes two other Grants, one of 196 Acres, to Edward Southeran, West from the Whorekill; the other of 304 Acres, to William Arundel, on the West Side of Delaware Bay, about three Miles South West from the Whorekills, in the Woods.

He also grants 300 Acres to Edward Bodell, in the Woods, South South East from the Whorekills about 3 Miles.

He also grants 900 Acres, on Slaughter Creek, to Randal Revel, said to be near to the Whorekill, (yet Slaughter Creek is 5 Miles North of the Whorekill Town.)

400 Acres in the Woods, to William Prentis, 5 Miles South West from the Whorekill Town.

300 Acres in the Woods, to William True, 5 Miles Distance South West from the Whorekill.

800 Acres in the Woods, to John Kirk, South West from the Whorekill Town, about 5 Miles, and to a Branch proceeding from Rehobah Bay.

400 Acres, to John Johnson, on Rehobah Bay, upon Loues's Creek.

800 Acres, to Robert Brafey, in the Woods, near Rehobah Bay.

300 Acres, to Robert Brafey Jun. upon Rehobah Bay, Distance from the Whorekills about 10 Miles, bounded by Richard Brafey.

300 Acres to Richard Brafey.

1000 Acres to William Burton, on the South Side of Rehobah Bay, and on the North Side of the great River.

The Court at Whorekills, having Power to grant out Lands within their Jurisdiction, that Court, by Warrant, laid out, and Governor Andros at New York granted, 1000 Acres, to Francis Whirwell, on the North Side of the Southermost Branch of Duck Creek.

These shew, that a very large District the Whorekills District was; For this last Grant, is 35 Miles more North than the Whorekill Town. And some of the above Grants are also 10 Miles South from the Whorekill Town. So that the above Grants prove two Things.

1. That the Whorekills was a County or large District.

2. That Lands were granted out, so early as before 1678, by the Duke of York's Governors, very far South of, and below the Whorekill Town, and our Cape Cornelius, viz. 10 Miles below it, down to the great River. (And that great River was Indian River, Vide the Map for Rehobah Bay, and for Indian River, far below Cape Cornelius.)

The Secretary's Letter from New York, containing the Governor's Order about a Tract of 680 Acres laid out for one Walker, in May 1677, upon the South Westmost Creek of Rehobah Bay.

Governor Andros's Grants for 600 Acres unto Meggs and Colley, lying in the Woods near unto Rehobah Bay distant from the Whorekill about 10 Miles.

Also for 400 Acres unto John Okey, being upon Rehobah Bay distant about 8 Miles South from the Whorekills.

Also for 900 Acres to Hignett and Crue, near unto Rehobah Bay, about 4 Miles to the South of it, that is 4 Miles to the South of Rehobah Bay.

The Duke of York's Feoffment to Mr. Penn for the lowest or South Tract, grants all that Tract of Land upon Delaware River and Bay, beginning 12 Miles South from the Town of Newcastle, otherwise Delaware, and extending South, to the Whorekills, otherwise Cap in Lopen; and the Soil Fields, &c. belonging to the Limits aforesaid.

Was the Day Mr. Penn arrived in America.

Livery and Seisin was given to him of the Lower Counties.

1682. Oct. 29. Being the *very next Day* after, and *being the second Day after he arrived in America*, he sends his Summons to the Justices of the *Whorekill County, alias Deal County*, to meet him the next *Thursday*, in order to hold a General Court for settling the Jurisdiction of their Parts; and, in his Summons, tells them the Duke has granted him from 12 Miles South of *Newcastle* down to *Cape Henlopen*.

Dec. 6. He had then been but bare 40 Days in *America*, and that, up at *Uplands*; and then, his whole Country, (*Pensilvania* and the *Lower Counties* also) joined in one Assembly together, held at *Uplands*, and pass an Act, to unite the *Lower Counties* unto *Pensilvania* as of the proper Territory thereof. And, in that Act, it's recited that the Duke of *York* had granted to him (in all) from 12 Miles Northwards of *Newcastle*, down to the *South Cape*, commonly called *Cape Henlopen*, but, by the Proprietor and Governor, now called, *Cape James*.

25. Proprietor *Penn* issued his Commission to 7 Justices of the Peace in the Jurisdiction of the County of the *Whorekills*, which from henceforth (says he) shall be called by the Name of *Suffex*; and the Extent thereof shall be, from the main Branch of *Masplion Creek* called the *Three Runs* Northwards, and *Southwards to Assawarmet Inlett, reputed and accounted Cape Henlopen, which said Cape Henlopen, I will, from henceforward, have called by the Name of Cape James*.

26. Proprietor *Penn* issued his Warrant to the Justices of *Suffex* County, that, before any Land was surveyed for any other Person, they should issue a Warrant to the Surveyor, to lay out, for the Duke of *York*, 10,000 Acres for a Manor; and other 10,000 Acres, for a Manor for himself; and he would have the *Duke's Manor lie, on the North Side of Assawarmet Inlett, as near to Cape James as might be*.

Mar. 22. The Duke of *York* actually obtained a Grant from the Crown of the Town of *Newcastle* and the Lands within the Compacts or Circle of 12 Miles about it, and the Tract beginning 12 Miles South from the Town, and extending South to *Cape Lopin*.

Which Grant, under the Great Seal, we have; thereby to shew that the Duke obtained it for Mr. *Penn*, in pursuance of his Covenant for further Assurance.

A further Grant did pass the Great Seal (or was very near to doing so) from King *Charles* to the Duke of *York*, of the Town of *Newcastle*, of the River *Delaware* and all Islands therein, of the Tract of Land upon the *West Side* of the River *Delaware*, from *Skuikill Creek* unto *Bomby's Hook*, and from *Bomby's Hook unto Cape Henlopen, now called Cape James, being the South Point of a Sea Warmett Inlet, being formerly the Claim or Possession of the Dutch, or purchased by them of the Natives, &c.*

The Deputy Surveyor *J. Barkfeild's* Return, by Order of *William Clark*, that he had surveyed and laid out a Tract of 10,000 Acres of Land, for the Duke of *York*, on the *North Side of Assawarmet River and Islelets*, in the County of *Suffex* near the Mouth of the said Inlett.

1683. June 1. The Chief Surveyor *William Clark*, also backs and signs that Return, and makes an additional Return of his own.

And there is a Draught or Map of those 10,000 Acres.

The Deputy Surveyor's Return that he had laid out for Mr. *Penn* 4790 Acres, for a Manor, in the County of *Suffex*, on the *South Side of Rehoboth Bay*.

1683. July 26. 1684. June 1. The Chief Surveyor's Return backt thereon.

And a Draught or Map of those 4790 Acres.

The Deputy Surveyor's Return that he had, by virtue of Mr. *Penn's* Order to the Chief Surveyor, laid out for *Depree* and *Barker* 645 Acres, called *Fairfields*, on the *South Side of the Indian River* in the County of *Suffex*.

1684. July 10. The Chief Surveyor's Return thereon.

And a Draught or Map of those 645 Acres.

The Deputy Surveyor's Return that he had, by like Order, laid out for *John Oakey* 800 Acres, called *Mulatto Hall*, on the *South Side of Indian River* in the County of *Suffex*.

1684. July 10. The Chief Surveyor's Return thereon.

And a Draught or Map of those 800 Acres.

The Deputy Surveyor's Return that he had laid out for *John Croper*, 1000 Acres, called *The Lad's Delight*, on the *South Side of Indian River*, in the County of *Suffex*.

1684. July 10. The Chief Surveyor's Return thereon.

And a Draught or Map of those 1000 Acres.

1684. Nov. 2. A Grant of those Lands from Mr. *Penn's* Land-Commissioners to *Croper*.

The Deputy Surveyor's like Return that he had laid out, for *John Vines*, 500 Acres, called *Barkin*, on the *South Side of the Indian River*, in the County of *Suffex*.

1684. July 10. The Chief Surveyor's Return thereon.

And a Draught or Map of those 500 Acres.

The Deputy Surveyor's Return that he had laid out, for *John Kypshaven*, 500 Acres, called *Nonsuch*, on the *South Side of the Indian River*, in the County of *Suffex*.

1684. Feb. 1. The Chief Surveyor's Return thereon.

At *Suffex* County Court the *Indian Assawamack Harmatamale*, acknowledged in Court, his Sale to *Alexander Molifone* of 1000 Acres on the *South-side of the Indian River*.

1684. May 13. The Deputy Surveyor's Return that he had laid out for *Alexander Molifone* 1000 Acres, called *Cattle's Delight*, on the *South-side of the Indian River*, in the County of *Suffex*.

1684. July 10. The Chief Surveyor's Return thereon,

And a Draught or Map of those 1000 Acres.

Now please to turn to our Map, proved in the Cause.

Every one of these 8 Tracts are *far below Cape Cornelius*.

Every one of these 8 Tracts go down *Sou h, below Indian River*, and the Duke of *York's* Manor extends *precisely to our Cape Hinlopen*.

Every one of them, therefore, do not bound Eastwards to the *Bay of Delaware, but to the Ocean*.

After many Hearings before the Privy Council, between Lord *Baltimore* and Mr. *Penn*, the Lords of the Council, this Day, declare the Tract of Land then in Dispute did not belong to my Lord *Baltimore*, but it remained *doubtful what were the true Bounds of the Land called Delaware*?

The Lords heard them, *again*, and considered *what might be the proper Boundaries of the Country of Delaware*, and then, *only proposed* that the whole Peninsula or Tract of Land called *Delaware*, from East to West, *as far as Cape Hinlopen southward*, should be divided into two equal Parts.— *My Lord Baltimore desired further Time to consider of this Proposal* — The Committee allow him a *Week longer, to offer his Objections*.

My Lord *Baltimore* and Mr. *Penn* again attended, and were heard, *expressly concerning the Boundaries of the Country of Delaware*. And the Lords resolve to report that, for avoiding further Differences, the Tract of Land lying, between the River and Bay of *Delaware*, and the *Eastern Sea*, on the one side, and *Chesapeake Bay* on the other, be divided into two equal Parts—by a Line, from the Latitude of *Cape Hinlopen*, to the 40th Degree.

The final Order in Council, made this Day, also contains a very strong Declaration that the Tract of Land then in Dispute had been inhabited and planted by Christians, at and before the Date of the Lord *Baltimore's* Patent, as it had been, ever since, to that Day, and continued as a *distinct Colony* from that of *Maryland*, and then repeats and confirms the foregoing Report and Determination, and orders the Line of Division to begin, *from the Latitude of Cape Hinlopen*, and to go to the 40th Degree, and, *twice over*, mentions the *Eastern Sea* as the Boundary of Part of it.

Must not that Person be very much hardened, who can now say, that *Hinlopen did not lie in the Sea*, but lay at *Cape Cornelius*, and at the Mouth of the Bay?

Was there, ever, so express, and so *very strong*, a Proof to the contrary?

I would only add that, in 1685, Lord *Baltimore* petitioned to set aside that Order of 1685, but his Petition was *dismissed*.

He again in 1700, petitioned again it, and, upon a full Hearing, before the Queen, personally, assisted (*inter alia*) by the Lord Chancellor, both the Chief Justices *Holt* and *Trevor*, and the Master of the Rolls, not only that second Petition was *also dismissed*, but the Order of 1685 was *confirmed in all its Points*, and ordered to be forthwith carried into Execution.

And in *July 1731*, he petitioned the Crown, and mentioned that there were such Orders of 1685 and 1700, and prayed the Crown to order Mr. *Penns* to join with him in making the Division.

And by that means he *forced* us into the present Agreement, upon his own Terms, and to give him Lands up very high for his (General) North Bounds.

And, yet, now says that *Cape Henlopen* did not lay south of *Cape Cornelius*, but it lay quite at the Mouth of *Delaware Bay*.

Our written Evidence contains more Evidence yet, For

At *Suffex* County Court the *Indian Schackmacker* acknowledged another Sale, to *Norton Clappole*, for 1000 Acres called *Indian Grove*, on the *South-side of the Indian River*, and another Sale to *Matthew Taylor* for 500 Acres, on the *North-side of Indian River*.

Sales recorded in *Suffex* County, from the before-named *John Oakie* of one Moiety of *Mulatto Hall*, containing 800 Acres, on the *South-side of Indian River*, unto *John Barker* in Consideration of 30 L.

Another Sale recorded in *Suffex* County Court from *John Barker* unto *Peter Waples* of the County of *Somerset in Maryland*, but now of the aforesaid County of *Suffex*, Planter, of 300 Acres of Land on the *South-side of Indian River* in the County of *Suffex*, at the Head of a Neck called *Pine-Neck*, which had been granted by Mr. *Penn's* Commissioners on 19th September 1691. This Sale made in Consideration of 4500 Pounds of Tobacco.

Another Sale recorded in *Suffex* Records, whereby *William Clark* of the County of *Suffex*, for the Sum of 4300 Pounds of Tobacco, sells to *Peter Waples* of the same County a Tract of 400 Acres, which had been granted to *Clark* by Mr. *Penn's* Commissioners on 7th September 1691, on the *South-side of Indian River* in the County of *Suffex*.

The Government of *Maryland* took up *John Barker* and *Charles Tindall*, Inhabitants on the *South-side of Indian River*, to oblige them to submit to the *Maryland Government*.

— The Justices of *Suffex* County Court expostulated with the Magistrates of *Maryland* thereon; and told them that those Persons Lands had been taken up, first, under the Duke of *York*, and again, since, under Mr. *Penn*, and that those People had, always, paid their Quit-Rents to Mr. *Penn*. — The Magistrates of *Maryland* (who have a great Facility either in *making*, or in *altering*, Orders of the King in Council to serve their Turns) insisted upon the Order of 1685, to justify them, and said that Order was to divide Lands, such as were situated between *Delaware Bay* and *River* only on the one side, and *Chesapeake Bay* on the other. — But the Justices of *Suffex* County then, at that time, in their Letter, as fully and as clearly confuted that false Pretence, and in as apt Words, as we can possibly do now at this Minute. And their Letter to the Magistrates in *Maryland*, at fol. 61, of your Brief, is extremely well worth your reading on this particular Occasion.

They, in that Letter, took notice, also, of the Names of *Cape Henlopen*, and *Cape Inlopen*, very significantly and to the purpose. So pray turn to it.

If modern Maps are to be lett in, the most authentick ones must be such as are *foreign* Maps, and then we have a *Swedish Book and Map* of this Year, containing an Account of *New Sweden*, now *Pensilvania*, which lays down both Capes, *Cape Cornelius* at the Mouth of the Bay, *Cape Hinlopen* down to the Sea, a great deal south of the other.

My Lord *Baltimore's* own written Map, annexed to the Articles, lays them down both so.

The Plaintiffs written Map, then used, lays them down both so; and that Map we have produced and proved.

My Lord *Baltimore's* Petition, to force us to execute the Order of 1685, must refer to that Order of 1685.

My Lord *Baltimore's* own written Notes for the Agreement, says, the Division-Line shall in effect an East and West Line to be drawn from *Cape Hinlopen*.

The Draft of the Articles says in the 3d Article, that the East and West Line shall begin (to run across the Peninsula) at the Place in the said Draft or Map called *Cape Hinlopen*, which lies *South of Cape Cornelius*, upon the *Eastern Side of the said Peninsula, towards the main Ocean*.

After a very long Consideration, the said Articles were solemnly sealed by the Parties.

And we now pray they may be carried into Execution.

Besides all this written Evidence (which will not lie) an infinite Number of our Witnesses, and a great Number of the Defendant's Witnesses too, all prove that *Cape Hinlopen* did lay there.

And I must finish with the Words of the Examination by the Defendant of one of our Witnesses from *Maryland*, viz.

John Teague of Maryland, Planter, aged 85. Does not know Cape May, but has known the Whorekills, and the Land from Phenix's Island to the Whorekills Town, for above 50 Years; and that the said Land has been called by the Name of Inlope for the said time.

As to the Circle round *Newcastle* and the Dimensions of it.

I'll first precisely state the Difference between us.

We say the Circle is to be 12 Miles distant from the Town.

He says he meant, and it ought to be, a Circle, which, when you measure all round the Periphery of it, will make a Ring of 12 Miles, but will be less than two Miles distant from the Town.

Now we'll discuss that.

King *Charles*, in his Letters Patent to Mr. *Penn* for *Pensilvania*, expressly says that our Southern Boundary shall be by a Circle drawn at 12 Miles Distance from *Newcastle* Northwards and Westwards unto the Beginning of the 40th Degree, and then by a straight Line.

1682. August 24. This cuts off a Corner from *Pensilvania*, which, otherwise, had been an oblong Square of 5 Degrees by 3 Degrees exactly. The Duke of *York's* Feoffment to Mr. *Penn*, of *Newcastle*, grants all that the Town of *Newcastle*, otherwise *Delaware*, and all that Tract of Land lying within the Compass or Circle of 12 Miles about the same. To hold the said Town, and Circle of 12 Miles of Land. And covenants to make further Assurance of the Town and Circle of 12 Miles of Land. And appoints *John Moll Esq*; to make Livery.

1682. August 24. The other Feoffment, of the self-same Date, conveys to Mr. *Penn* the Southern Tract, and describes it to begin 12 Miles South from the Town of *Newcastle*. Now take these three Grants together, (all which are recited in the present Articles) The first excludes all the Lands to 12 Miles North of the Town. The last excludes all the Lands to 12 Miles South of the Town. And what Circle or Distance could the middle Grant mean, which was made by the same Person, and on the same Day, as the last Grant was made?

1682. Nov. 21. What Circle did all People, then, at the Time, think was granted by the Feoffment for *Newcastle*? Mr. *Moll*, who gave the Possession to Mr. *Penn*, and who was the best Mathematician they ever knew in that Part of *America*, he puts upon the Records an Entry that he was the first Person left there in Commission by Sir *Edmund Andros*, and that Mr. *Penn* came and demanded Seisin of him; and, says Mr. *Moll*, Mr. *Penn* produced two Feoffments, the one for the *County of Newcastle*, with 12 Miles Distance, North and South, thereunto belonging. So we have his Sense of the Circle plainly.

1682. December 6. But he does not stop here; He gives an account of Delivery of Seisin merely of the Fort and Town of *Newcastle*. And then (says he) we went down, to give Seisin also, of the lowest Tract, under the other Feoffment, and did so. And pray where did they go, to give Seisin of that lowest Tract?

1731. July 22. He tells us expressly, That, "few Days after that, we went, to the House of Captain *Edmund Cantwell*, at the South-side of *Apoquining Creek*, by *Computation above 12 Miles Distance from the Town of Newcastle*, as being Part of the two Lower Counties mentioned in the Duke's other Feoffment, and we made there the same Form and Delivery as we had done at *Newcastle*."

1731. (1.) The Act of Union of the Lower Counties to the Province of *Pensilvania*, recites that the Duke had granted to Mr. *Penn* all that Tract from 12 Miles Northward of *Newcastle*, down to the South Cape called *Cape Henlopen*.

1731. (2.) These are cotemporary Expositions. Lord *Baltimore* delivered over his own Terms and Proposals, in Writing.

1731. (3.) By the first Article of all, he himself writes, there shall be a Circle of 12 Miles Distance drawn from *Newcastle*. [No, says he now, I meant a Circle whose Periphery, when measured all round would measure to 12 Miles] But alack-a-day, that would not be 12 Miles, nor 2 Miles, distant from *Newcastle*.

1731. (4.) By the 3d Article of his own Proposals he directs that a Line, which is there mentioned, shall intercut the Periphery of the Circle of 12 Miles from *Newcastle*. This happens to be very fatal to him: For here, tho' he mentions a Periphery, yet he says, most explicitly, that the Periphery, so to be intercut, shall be the Circle of 12 Miles from *Newcastle*.

1731. (5.) Paris swears that, during the whole Treaty, my Lord himself, and all the Parties, often spoke of this Circle, and all of them constantly mentioned it as at 12 Miles Distance from the Town, and at no other. And that my Lord took a Scale, from the Circle laid down upon his Map, as for 12 Miles, in order, by a proper Addition of more to it, to find where the other Measure, of 15 Miles South from *Philadelphia*, would fall, and to draw a Line, for that other Distance, in a proper Place, by that Help. And I humbly think my Lord's own Proposal abundantly confirms his Testimony.

1731. (6.) Paris also swears that the Circle, upon my Lord's Map, extended West to touch *Elk River*. If you look upon our proved Map, 12 Geometrical Miles will do so, but 12 Statute Miles are short of that.

1731. (7.) The Draft of the Articles (as at first delivered over) contains, that there shall be the said Circle mentioned in the said Charter for *Pensilvania*, and Deed of Bargain and Sale or Feoffment of *Newcastle* (or so much thereof as is requisite) drawn and markt out at the 12 Miles Distance from the Town of *Newcastle*. Upon the same Sheet of the Draft, when returned, Mr. *Sharpe* had writ *The Miles throughout to be express English Statute Miles*. That Amendment was, with Difficulty, agreed to; and then, the Words are added "which 12 Miles shall be 12 English Statute Miles." Now this was an After-thought, whereby the Defendant got something, some small Matter, viz. about 2 Mile upon us, the Length of the Peninsula. For 12 Geometrical Miles Distance from the Town of *Newcastle* is, within a mere Trifle, 14 Statute Miles distant from the Town. But says my Lord, by this After-thought, call those 12 Miles expressly by the Name of Statute Miles. Well do so; but, still, it will be 12, of some Miles or other, distant from the Town. Did he then mean that it should be a Circle whose Periphery when measured all round, would measure to the Extent of 12 Statute Miles?

1731. (8.) If he did, as this Matter was immediately then under his Consideration, was that a proper Amendment, which he or his Solicitor proposed?

1731. (9.) Why his Amendment left the Circle still distant 12 Miles from the Town (as his own Proposals had proposed) tho' they were now reduced to be Statute Miles only, and not geometrical Miles.

1731. (10.) And his Amendment, if he had then meant what he now pretends, must have been a very different one. It should have been this, You must say less than two Statute Miles distant from the Town.

1731. (11.) Whereas, on the contrary, his Amendment still agrees it shall be full 12 Miles distant from the Town, but that they should only be twelve such Miles as were Statute Miles.

1731. (12.) And if he had had then the Measure all around the Periphery in his Contemplation, his Amendment, which he contended for, was for a very small and trifling Amendment in his own favour; for the Semi-diameter of a Periphery of 12 Statute Miles, is very minutely less than the Semi-diameter of a Periphery of 14 Statute Miles would be.

1731. (13.) But the Semi-diameter of a Periphery of 12 Statute Miles, and 12 Miles Distance from the Town, are Things so extremely disproportionate, each to the other, (the one being less than 2 Miles, the other full 12 Miles,) that this could never have once entered into his Head, then, under that Amendment.

1731. (14.) But it is the Production of some of his cunning Men, since, in *Maryland*.

1731. (15.) After this Amendment (such as it really was) was agreed to, he desired that the Draft should be laid before his Mathematician, for the Purpose, as he himself swears, to consider of the Propriety and Fitness of the Terms in the Agreement.

1731. (16.) He admits his Mathematician did give his Opinion upon the same in Writing.

1731. (17.) We have proved our Duplicate of that Opinion: my Lord sinks his Copy of that, as he does every thing that he can.

1731. (18.) And what says Mr. *Senex* of this Circle?

1731. (19.) Why he says, most explicitly, That a Circle is to be drawn round *Newcastle*, That *Newcastle* is to be as a Center, And that the Circle is to be at the Distance of 12 English Statute Miles.

1731. (20.) But there is another Point which answers him. He fancies that the Feoffment of *Newcastle* is express the least clearly of all the three grand Deeds, and, therefore, he desires to fling out of the Case his own Agreement, so solemnly settled; to fling out, also, the Consideration of the Feoffment of the lowest Tract, (tho' that's recited in the Agreement, and helps to compleat the Description of part of the Circle) to fling out, also, the Consideration of the Grant of *Pensilvania*; (altho' that is not only recited in the Agreement, and makes a Description of part of the Circle, but is also expressly mentioned in the very second Article of the Agreement, which consists in the whole but of two Lines. For, the Article is, that the Circle, mentioned in the Grant of *Pensilvania*, and Feoffment for *Newcastle*, shall be drawn so and so) and he desires to take into Consideration, no earthly Thing but the Feoffment for *Newcastle* itself.

1731. (21.) Be it so, will that help him? I fancy not.

1731. (22.) For that Feoffment expressly says, in two several Places, that Mr. *Penn* was to have 12 Miles of Land.

1731. (23.) Now I defy all the Conjurors on Earth, to put 12 Miles of Land into a Periphery, that is but 12 Miles, when measured all round.

1731. (24.) It is absolutely impossible to be done, even if we had a whole Circle of Land.

1731. (25.) But, besides that, it happens, a little unfortunately for him, that *Newcastle* is upon the Side of the great River *Delaware*, and we have not above half a Circle of Land. So that a Circle, of his present Imagination, will not contain the half of 12 Miles of Land.

1731. (26.) Ergo. That cannot be the Circle which this single Feoffment could, by any Possibility whatever, intend.

1731. (27.) Lastly, The Articles, so solemnly, and with so much length of Time, Deliberation, and Consultation, prepared, perused, settled, and executed, says that the Circle shall be drawn and markt out at the 12 Miles Distance from the Town of *Newcastle*.

1731. (28.) And, accordingly, we pray it may be decreed to be run out.

1663. March 12. **Mr. Penn's Title, to Pensilvania, and the Lower Counties also, as contained among the Rest of the Written Evidence.**

1664. Aug. 27. Grant to the Duke of *York* of *New York*, and all Lands, &c. appurtenant thereto.

1664. Aug. 27. Conquest from, and surrender by, the *Dutch* of *New York*.

1664. Aug. 27. Conquest from, and surrender by, the *Dutch* of *Delaware*.

1667. July 21. ¶ The constant Possession and Government; and Acts of Propriety, done by the Duke of *York*, by his Governors Colonel *Nicolls*, and Colonel *Lovelace*, from 1663, to 1673.

1673. Feb. 18. Treaty of *Breda*, whereby the English Possession was confirmed by Treaty.

1674. June 29. Peace between *England* and *Holland*, restoring what taken by each other, during the then late War.

1674. June 29. New Grant to the Duke of *York*, of *New York*, and of all Lands, &c. appertaining thereto.

1674. July 1. The Duke of *York* appoints *Edmund Andros* Governor.

1674. Oct. 31. He receives *New York* from the *Dutch*.

1674. Novemb. 2. Continues the Officers there, and also at *Delaware*, by his own Order.

1674. Novemb. 2. Several of Governor *Andros*'s Commissions and Orders about *Delaware*.

1674. Novemb. 2. ¶ The constant Possession, Government, and Acts of Propriety, done by the Duke of *York*, by his Governor Colonel *Andros*, and his Deputy Captain *Brockbols*, throughout the Lower Counties, from 1674, to 1682.

1680. July 10. An Indian Purchase made by *John Moll*.

1682. Aug. 21. ¶ And an Assignment thereof by *Moll* to Mr. *Penn*, on 21 February 1682.

1682. Aug. 21. Grant to Mr. *Penn* of the Province of *Pensilvania*.

1682. Aug. 21. Release of *Pensilvania*, from the Duke of *York* to Mr. *Penn*.

1682. Aug. 21. Indenture of Feoffment, from Duke of *York* to Mr. *Penn*, of *Newcastle*, and 12 Miles about it, with Power to make Livery, and Covenant for further Assurance.

1682. Aug. 21. Other Indenture of Feoffment, from Duke of *York* to Mr. *Penn*, of the South Tract, with like Power, and like Covenant.

1682. Aug. 21. Entry in the Records, that Mr. *Penn* this Day took Possession of both those Tracts.

1682. Aug. 21. Another Entry therein, that *Livery* and *Seisin* were then given to him, by *Moll* and *Herman*, the Duke's Attorneys.

1682. Aug. 21. ¶ The Deposition of the Person who saw it given then.

1682. Aug. 21. Another Entry thereof upon the Records, more fully, under the Date of 21 November.

1682. Aug. 21. The Attornment of the principal Tenants.

1682. Aug. 21. Captain *Brockbols* and Council, their Proclamation, at *New York*, to discharge all the Magistrates, at the several Parts in *Delaware*, from any further Service to the Duke, and ordering them to yield Obedience to the Powers granted to Mr. *Penn*.

1682. Aug. 21. Captain *Brockbols*'s Letter to Sir *John Werden*, that Mr. *Penn* was possesst of what was granted him; and that what was now left, of the Duke's Province, would not defray the Charge.

1682. Aug. 21. ¶ The Proof of Mr. *Penn*, and his Families, constant possessting and governing, from 1682, and granting out Lands, to this Hour.

1682. Aug. 21. A new Grant from the Crown, to the Duke of *York* of *Newcastle*, and the South Tract, actually past, and under the Great Seal.

1682. Aug. 21. The Entries of a further Grant, from the Crown, to the Duke of *York*, of the same, in a more extensive Manner; and a Certificate, that it did pass the Great Seal, (but it's not enrolled.)

1685. Novemb. 13. Order in Council, declaring that the Land intended to be granted to Lord *Baltimore*, was only Land uncultivated, and inhabited by Savages, but that the Lower Counties were inhabited, and planted by Christians, at and before the Date of his Patent, as it had been ever since, to that time, and continued as a distinct Colony from that of *Maryland*.

1691. October 25. Grant under the Great Seal of the Government of *Pensilvania*, and the Territories depending thereon, unto Colonel *Fletcher*, the Governor of *New York*, during the War, on account of Mr. *Penn's* Absence from the Province.

1693. August 20. An immediate Grant and Restoration, of the Government of all the same, to Mr. *Penn*, under the Great Seal.

1696. An Act of Parliament, that all Governors of Plantations should be approved by the King, and should take Oaths to observe Acts of Trade, &c.

1697. April 30. A Commission to several Persons to swear the Governor of *Pensilvania*.

March 17. *William Markham*, the Governor under Mr. *Penn*, sworn under the same.

1700. September 13. Mr. *Penn's* Indian Purchase of the River *Susquehanna*.

1702. January 21. The Queen's Order approving *Andrew Hamilton* Esq; for Governor, named by Mr. *Penn*.

1703. July 30. Ditto, approving *John Evans* Esq; appointed by Ditto.

1708. July 18. Ditto, approving *Charles Gookin* Esq; appointed by Ditto.

Oct. 6. & 7. Mr. *Penn's* Mortgage to *Gee, Woods* and Others, for 6600*l.*

January 9. ¶ *Gee and Woods* on 13 and 14. January 1729, convey one Moiety to *John Penn* in Fee, one Quarter part to *Thomas Penn* in Fee, and the remaining part to *John and Thomas Penn* in Fee, in trust for *Richard Penn*, and his Heirs.

27. Lord Baltimore's Petition against the Order of 1685, for that it was obtained without hearing him.

Order in Council dismissing that Petition.

1709. May 19. His further Petition, expressly repeating that gross Falsity.

June 23. The Queen's Order, upon a Hearing before herself in Council, dismissing that Petition, and confirming the Order of 1685, in all its Points, and ordering it to be put in Execution without any further Delay.

Order in Council approving Sir *William Keith*, nominated by Mr. *Penn*.

Probate of Mr. *Penn's* Will, whereby he devised 40,000 Acres to his Descendants by his first Wife. And gave the Residue of his Estate to 12 Trustees, to be disposed of to his second Wife's Children, as she should appoint.

¶ Her Deed of Appointment of 18 November 1718. $\frac{1}{2}$ to *John Penn*, paying 1500*l.* to his Sister *Margaret*.
and the other $\frac{1}{2}$ to *Thomas Richard and Dennis Penn*.

¶ Bills, Answers, and Decree in Exchequer, of 4 July 1727, against *Springett Penn*, then the Heir at Law, that the Will was well proved.

¶ A Family Deed of 5 July 1727, whereby All the Sons of Mrs. *Penn* agreed, that *John Penn* should hold his Moiety, charged with 1500*l.* for his Sister *Margaret*, and that *Thomas and Richard Penn* should hold their Moiety as Tenants in common. *Dennis* being dead. And that the Trustees in their Father's Will should convey accordingly.

¶ By Deed of February 12. 1731. *Margaret Freame* releases 500*l.* Part of the 1500*l.*

¶ By Indenture of Release of 24 June 1735. The surviving Trustees in Mr. *Penn's* Will convey all his Lands to *John and Thomas Penn* in Fee.

1726. April 18. Order in Council, approving *Patrick Gordon* for Governor, nominated by *Springett Penn*, the Heir at Law, and *Hannah Penn*, the Executrix.

1731. September 1. *William Penn*, then Grandson and Heir at Law of Proprietary *Penn*, releases all his Claim to the said Province and County, one Moiety to *John Penn* in Fee, one Quarter Part to *Thomas Penn* in Fee, and the remaining Quarter Part to *John and Thomas Penn*, in Trust for *Richard Penn*, and his Heirs.

22 and 23. September 29. Bargain and Sale enrolled, whereby *John, Thomas and Richard Penn* mortgage *Pensilvania* to *William Penn* for 5000*l.*

¶ By Bargain and Sale enrolled of 7 October 1732. *William Penn* transfers his Mortgage to *Alexander Forbes*,

¶ By Bargain and Sale enrolled, of 26 March 1737. *Forbes and William Penn* convey that Mortgage to *Thomas Jackson*,

¶ And, by a Declaration of Trust, of the same Date, *Jackson* declares the Trust, as to a Moiety therein, for the Plaintiff *John Penn*.

¶ And, by a Conveyance of 29 January 1740. *Jackson* releases one Moiety to the Plaintiff *John Penn* in Fee, one Quarter to the Plaintiff *Thomas Penn* in Fee, and the remaining Quarter Part to the Plaintiffs *John and Thomas Penn* in Fee, in Trust for the Plaintiff *Richard Penn*, and his Heirs.

1732. August 26. An Order of Council, being a strong Precedent that the Crown will not take Advantage of defective Titles in *America*, where Possession and Improvement has been.

1733. August 2. Order in Council approving Major *Patrick Gordon*, re-appointed by the now Plaintiffs *John, Thomas, and Richard Penn*, their Mother *Hannah*, and their Nephew *Springett*, who had appointed him, being both dead.

1737. April 21. Lord Baltimore petitioned the King not to approve Colonel *Thomas* for a new Governor, whom Mr. *Penns* had nominated, pending this Suit; but that, till the Dispute was determined, the Crown would appoint some indifferent Person.

June 3. Report from the Lords of Trade, that the Family had appointed, and they would not advise any Alteration.

July 21. My Lord's further Petition, praying earnestly to be heard against that Report, for that the Plaintiffs appointing a Governor, now, would be insisted on as an Evidence of their Right.

February 4. A Report that, when the Lords had appointed to hear that Petition of his, he prayed Leave to withdraw it.

6. Order in Council allowing him to withdraw it.

Order in Council approving Colonel *Thomas*, the present Governor, appointed by the now Plaintiffs.

1742. May 28. *Letitia Aubrey*, a Daughter of *William Penn* Esq; who had 10,000 Acres under his Will, released all Claims under the said Will to the Plaintiffs, who had long before given her those Lands, and she had sold them; and this Release was executed two or three Days before she was examined in the Causa, and is proved in the Causa, in order to make her a good Witness.

An Account of the several Indian Purchases mentioned in the Written Evidence.

1629. June 15. Sale from the *Indians* to the Honourable Mr. *Samuel Godyn*, of the Lands on the South Side of the South Bay, called the Bay of the South River, stretching in Length from Cape *Henloop* to the Mouth of the said South River, about eight large Miles.

Observe this, the first and earliest Purchase made by the *Dutch*.

1649. April 15. Sale from the *Indians* to *Andries Huddie* and other *Dutchmen*, of Land on the East Side of the South River of *New Netherland*.

1651. July 19. It is mentioned, (in the Transfer which was made to *Peter Alricks* upon 12 April 1657.) that there was an *Indian Purchase* this Day made, but it no where appears.

1675. September 23. Sale from the *Indians* to Colonel *Andros*, to the Use of the Duke of *York*, of the Tract of Land on the West Side of *Delaware River*, eight or nine Miles below the Falls, and as far above the Falls, and all the Islands in *Delaware River*.

1678. November 18. Governor *Andros*'s Order, reciting, that some of the Land on the West Side of *Delaware River*, below the late Purchase at the Falls, is as yet unpurchased of the *Indians*, he therefore orders Captain *Cantwell* and *Ephraim Harman* to agree with the *Indians* for all that Tract, yet unpurchased, between the late Purchase at the Falls, and the former below.

1679. May 4. Sale from the *Indians* to *Peter Bayard* of *New York*, of all that Tract of Land called *Boompies Hook*, on the West Side of *Delaware River*, and at the Mouth thereof, and stretching down along the said River to *Duck Creek*.—This Deed is witnessed by the above *Ephraim Harman*.

1680. July 10. Sale from the *Indians* to *John Moll* (in Behalf of the Inhabitants) of *Red Clay Creek*, and *White Clay Creek*, quite to the Falls thereof, as far as the Precincts of *Maryland*, the Land called *Muffer Creep* therein included.

And on 21 Feb. 1681. *Moll* assigns that Purchase to Mr. *Penn*.

In order to understand what follows, please to note, that on first Jan. 1680. The Court at *Whorekills, alias Deal*, on Complaint from the *Indians*, that Persons took away their Lands without paying for the same, settled what Price should be given, and that the *Indians*, when they received the Purchase, should come and make their Deeds in Court.

1680. January 1. Sales from the *Indians* of 1000 Acres, and 700 Acres, between *Slaughter Branch* and *Cedar Creek*.

1683. February 13. Sale from the *Indians* at *Suffex Court*, of 1000 Acres, on the South Side of the *Indian River*.

1685. October 2. Sale from the *Indians*, to Mr. *Penn*, of all the Lands from *Duck Creek* to *Coefer Creek*, all along by the West Side of *Delaware River*.

December 10. The *Indian Schachmaker* of *Affracamat* sold, before *Suffex Court*, 1000 Acres, called the *Indian Grove*, on the South Side of *Indian River*.

1700. September 13. The Kings of the *Susquehanna Indians* sell to Mr. *Penn*, all the Lands on both Sides of the River *Susquehanna*, and confirm to him a former Sale of the said Land, heretofore made to Colonel *Dongan*, whose Sale of the same to Mr. *Penn* they acknowledge they have seen.

An Account of the Chief Governors of the Great Settlement called, under the *Dutch*, the *New Netherland*, under the *English*, *New York*.

1630. July 15. A Director and Council, then established there, at Fort *Amsterdam*, in the Isle *Manhatans*, in *New Netherland*, before whom the *Indians* Confirmation of their Sale before made of Cape *Hinloop* was confirmed.

1638. May 6. *William Kieft*, Director General there.

1647. Sept. 20. *Peter Stuyvesant*, General there.

Who afterwards surrendered it to the *English*.

1663. Mar. 12. The Duke of *York* made Proprietor, and Chief Governor over *New York* and Appurtenances.

1664. April 2. He appoints Colonel *Richard Nichols* his (first) Deputy Governor.

1668. Mar. 25. Colonel *Francis Lovelace* now appears to be (the second) Deputy Governor.

The *Dutch* re-entered.

1673. Aug. 12. The *Dutch* appoint General *Anthony Colve* Governor General of *New Netherland* and its Appurtenances and Dependencies.

The *Dutch* again ceded it.

1674. June 29. The Duke of *York* was, again, made Proprietor and Chief Governor over *New York* and Appurtenances.

July 1. He appointed Major *Edmund Andros* to be his Lieutenant-Governor of the same.

To whom on 31 October the *Dutch* surrendered up the same.

1680. Novemb. 15. Governor *Andros* writes to the several Courts that he was going for *England*, but should leave Captain *Brockbols* his Lieutenant.

1681. Mar. 30. *Anthony Brockbols* appears to be the Commander there.

And on 27 August the Duke ordered him not to change the Magistrates.

1684. The Duke of *York* became King.

Since which time, the Governors of *New York* have been all appointed by the Crown.

But Note that, in 1682, the Lower Counties, and Powers of Government there, were granted away by the Duke of *York*, unto Mr. *Penn*, who has held the same ever since, separately.

An Account who has had the Command or Military Authority, from time to time, in the Small Settlement, or Delaware, or Lower Counties, generally.

1642. May 15. *Jan Jansen van Ilpendam* appointed Factor of the *Dutch West-India Company* in the *South River*.

1647. Sept. 20. *Andries Huddie* appointed Factor for the said *Dutch West-India Company* at Fort *Nassau*, in the *South River*.

1655. *John Paul Jacques* appointed Vice-Director and Chief of the *South River*, with very full Powers for Government, Administration of Justice, &c.

1657. April 12. A Conveyance, made by the Director and Council of the *New Netherland*, unto *Jacob Alricks*, as Director and Commissary under the City of *Amsterdam*, over their Colony in the *South River* and Fortres *Casimir*, but then called *New Amstel*, with all the Lands bought of the *Indians* according to a Sale of 19 July 1651.

1658. Octob. 28. *William Beckman* appointed Factor, Vice-Director and Governor over the *South River*.

1664. July 3. *Alexander Hynssoff* Governor of *New Amstel* for the City of *Amsterdam*.

So far under the *Dutch*.

The *English* Commissioners Power to Sir *Robert Carr* to reduce *Delaware*.

The Articles of Surrender thereof, by the *Dutch* and *Swedes* to him.

The Commissioners appointed Colonel *Nicols* to go to *Delaware Bay*, and take Care for the Government of the Place.

Captain *Carr* was appointed Commission Officer at *Delaware*, by Colonel *Lovelace*.

Dutch Re-entry.
 1673. Sept. 19. The Dutch Governor General appoints *Peter Alricks* Commander of *South River*, from Cape *Hinlopen* to the Head of the River.
 Dutch Cession again by Treaty.
 1674. Nov. 4. Colonel *Andros* appoints Captain *Cantwell* and Mr. *Tom* to take command of the Fort, &c. at *Newcastle*, or any Part of *Delaware River*.
 1676. Sept. 23. A Commission in Form granted to them for that Purpose.
 1677. Aug. 13. Colonel *Andros* appoints Captain *John Collier* Commander in *Delaware River and Bay*.
 1682. Aug. 24. Colonel *Andros* appoints Captain *Christopher Billop* to be Commander in *Delaware River and Bay*.
 1691. Oct. 25. William Penn Esq; became Grantee, by the Duke of York's Feoffments, of the Soil and Government of the 3 Lower Counties.
 King *William* resumed the Government (not only of *Pensylvania*, but also) of the Territories to *Pensylvania*, and granted the same to Colonel *Fletcher*, then Governor of *New York*.
 1693. Aug. 20. But, again, in 22 Months, restored all the said Government to Mr. *Penn*, by Patent, under the Great Seal.
 1697. Mar. 17. *William Markham* was Deputy Governor under Mr. *Penn*.
 1698. May. 27. D^o.
 1702. Jan. 21. Andrew *Hamilton* was Deputy-Governor under Mr. *Penn*.
 1703. July 30. John *Evans*, Deputy Governor under Mr. *Penn*.
 1708. July 18. Charles *Gookin*, Deputy Governor under Mr. *Penn*.
 1716. Dec. 17. William *Keith*, Deputy Governor under Mr. *Penn*.
 1725. Jan. 7. Patrick *Gordon*, Deputy Governor, by the Heir and Executrix of Mr. *Penn* deceased.
 1726. Apr. 18. D^o. re-appointed by the now Plaintiffs; the Heir at Law, and Executrix of their Father, who had before appointed him, being both dead, and the present Heir at Law having released his Right to them.
 1732. Jan. 26. The now Plaintiffs (after the strongest Opposition from Lord *Baltimore*) appointed Colonel *Thomas* their present Deputy Governor.
 1733. August 2. February 7.

Some Sort of **Subordinate Command** given, over a Particular Part of the Lower Counties.

1669. Feb. 28. Colonel *Andros* appoints a Scout and Commissaries, to keep good Order at the *Whorekills*.
 1674. Jan. 9. Colonel *Andros* orders Captain *Cantwell*, the Commander at *Newcastle* and *Delaware*, to appoint a Lieutenant and Serjeants to command at the *Whorekills*; the Number there being too small, at that time, for a Company.
 1676. Octob. 26. But, in less than two Years after, Colonel *Andros* appointed a Captain, a Lieutenant, and an Ensign of the Company at the *Whorekill*.

The **Times** of first Erecting Civil **Jurisdictions**, in the **Several Parts** of the Three Lower Counties, and the **Names and Limits**, given to those Jurisdictions.

1655. The Dutch Governor and Council at *New Netherland* gave a special Power to *John Paul Jacques* to be Vice-Director and Chief of the *South River*, and to administer Right and Civil Justice, as well as Military.
 1658. October 28. The like Commission to *William Beckman*, for the whole *South River*, in like Terms.
 1668. April 21. Governor *Lovelace* of *New York*'s Orders that the Civil Government at *Delaware* be continued, and the Governor and Council (there at *Delaware*) are to determine Complaints which shall be made against the Civil Magistrates. Those Counsellors to take an Oath to the Duke. The Laws, establish'd by the Duke, to be frequently communicated to the Counsellors and others. In Matters of Importance you must appeal to the Governor and Council of *New York*.
 T
 1669. January 25. The Governor and Council at *New York*, upon a Desire from the *Whorekill*, Order that there be an Officer appointed among them to keep the Peace, and that a Commission be sent for that purpose.
 February 26. The Governor writes that he sends such a Commission.
 28. The Copy of that Commission as recorded at *New York*, appointing Scout and Commissaries, to try all Matters, under 10 l. among themselves, but, above that, or for Crimes, they are to apply to *New York*.
 1672. May 6. The Governor writes, from *New York*, that the Time is out, and orders the Inhabitants, at the *Whorekill*, to make new Election of Scout and Commissaries, and send them to him to be confirmed.
 1672. May 17. The Governor and Council of *New York* order that *Newcastle* shall be a Corporation and Bailiwick, and have a Bailiff and 6 Assistants, and the Governor and Council settle the whole Frame of the Constitution of that Corporation.
 August 1. On Return of a double Number, the Governor chuses such as he thought fit for one Year, when they were to make a new Return.
 1673. April 14. A Commission from *New York* to some Persons to settle the Government and Officers at the *Whorekills* as formerly.
 1674. November 4. Governor *Andros* grants a Commission to the Old Commissaries at *Newcastle*, who were in Office when the Dutch came in, in July 1673, for the said Town of *Newcastle* and Dependencies.
 And five more to be Justices at *Newcastle*.
 And at *Newcastle*. And those at *Whorekill in the Bay*.
 1674. Nov. 6. An Entry in the *New York* Records of 5 Persons Names to be Justices for the River.
 Nov. 11. Commissions from the Governor at *New York* to swear the Commissaries at the Court up the River.
 1676. Sept. 23. Governor *Andros*'s Commissions to 6 Persons to be Justices in the Jurisdiction of *Delaware River and Dependencies*.
 Sept. 25. His Instructions to the Justices, declare that there shall be three Courts in the several Parts of the River, viz.
 Above at *Uplands*. And in *Newcastle*. And below at the *Whorekills*.
 1677. September 5. The Court at *Newcastle* appointed a Constable, and fixt his Limits or Bounds, to be from the South-side of St. George's Creek to Boomties-Hook.
 6. Governor *Andros*'s Commission to 7 Justices for *Newcastle* and Dependencies.
 1678. October 14. Governor *Andros*'s Commission to 7 Persons as Justices of *Newcastle*.
 1676. October 26. Governor *Andros*'s Commission to 5 Persons to be Justices at the *Whorekill* and Dependencies.
 1677. Nov. 10. Governor *Andros*'s Commission to 7 Persons to be Justices at the *Whorekill* and Dependencies.
 1678. October 8. D^o to 7 Persons at the *Whorekill* and Dependencies in *Delaware Bay*, for this Year.

Now we branch out into four Courts.

| | | | |
|--|--|--|---|
| 1680. May 28. Governor Andros's four Commissions to 5 Persons to be Justices in the Jurisdiction of Upland Court and Dependencies. | 5. More in the Jurisdiction of Newcastle and Dependencies. | 4. More in the County of St. Jones's in Delaware Bay and Dependencies, to begin from the South-side of Duck Creek, and to extend to the North-side of Cedar Creek. | 5. More to be Justices at the Whorekill and Dependencies, that Court to begin at the South-side of Cedar Creek, and so to go downwards. |
| 1682. November 7. Mr. Penn's Commission to 5 Persons to be Justices of the Peace and Court for St. Jones's. | 1682. November 7. Mr. Penn's Commission to 5 Persons for Justices of the Court for the County of Whorekill alias New Deal. | | |
| 1682. December 25. Appoints 7 Persons Justices of the Jurisdiction of St. Jones's. | 1682. December 25. Also 7 Persons to be Justices of the Jurisdiction of the Whorekill. | | |
| | | To be henceforth called Kent. | To be hence called Sussex. |

From the South-side of the Main Branch of Duck Creek Northwards, and Southward to the North-side of the Main Branch of Mispillion Creek, called the Three Runs.

The Extent whereof shall be from the Main Branch of Mispillion Creek, called the Three Runs, Northwards, and Southwards to Affawamont Inlet, reputed and accounted Cape Henlopen, which I will, from henceforward, have called by the Name of Cape James.

Note. Upland was made into Chester County, a Newcastle County, continues Newcastle County to this Day. Kent County, continues Kent County to this Day. Sussex County, continues Sussex County to this Day.

The Attorney General ought not to be a Party.

8 August 1734.

My Lord Baltimore petitioned the King in Council, by a further Charter or Letters Patent to confirm to him the whole of such Part of the Peninsula as was contained within the Limits of his former Charter, notwithstanding the Words *hactenus inculta* in the Recital of the said former Charter contained.

This Petition (my Lord confesses in his present Answer) was calculated in order to get a Grant of the Lower Counties to himself.

And upon that Petition, my Lord obtained an (*ex parte*) Report from the Board of Trade.

Mr. Richard Penn, the youngest Brother, in behalf of himself, and his two elder Brothers then in *Pensilvania*, presented another Petition to the King in Council, setting forth the *Swedes and Dutch Possession*, the Conquest from, and Cession by, the *Dutch*, the Grants to the Duke of *York*, his Feoffments to Mr. Penn, Mr. Penn's long Possession, and great Improvements; the several Contests and Orders between the Parties, the Agreement which had been entered into above two Years before, and the shameless Chicanery of my Lord's Commissioners to prevent the carrying the same into Execution, and, in short, touched upon every part of the whole Case. And pray'd that he and his Brothers might not, upon the Lord Baltimore's Petition, be drawn (especially at so great a Surprize, and in such an uncommon Case) to set forth their Right to their ancient Possession; and that his Majesty would not be pleased, at the Lord Baltimore's Request, who had so lately convey'd those Lands to the Petitioners, to strip the Petitioners, who had not hitherto received any Benefit from the said Grant, to give the Fruit of their great Labour, Hazard and Expence to the Lord Baltimore, who had already so very beneficial a Grant; and that his Majesty would not grant the Prayer of Lord Baltimore's Petition, but dismiss the same, and confirm their Possession and Title, agreeable to the Limits in the Deeds of May 1732, between the Lord Baltimore and them.

The Report, and the Order of Council thereupon, (which was made upon both those Petitions, and upon hearing Council on both sides) was this.—That it appearing that such an Agreement had been entered into, on 10th May 1732, between Lord Baltimore, and the now Plaintiffs, for adjusting the Boundaries of the Lands granted to them by their respective Charters, which Articles had not been carry'd into Execution within the Time thereby limited, but, notwithstanding such Lapse of Time, the Validity of the said Articles being insisted on by, and on behalf of the now Plaintiffs, the Lords of the Committee do agree, humbly to report to your Majesty, as their Opinion, that the Consideration of the said Report, and Petitions, should be adjourned until the end of Michaelmas Term next, in order to give an Opportunity to the said John, Thomas and Richard Penn to proceed, in a Court of Equity, to obtain Relief upon the said Articles of Agreement so insisted upon by them as they shall be advised, and that, after the Expiration of the said Time, either Party should be at Liberty to apply to the Committee of Council for Plantation Affairs, as the Nature of the Case may require.—Which Report was confirmed by the King, and ordered accordingly.

We immediately brought our Bill, in Pursuance of this Order, and we have most precisely stated this Order, in our Bill, and we do by our Bill insist (just as we did before the Committee) that, notwithstanding the Lapse of Time, the Agreement does still subsist, and is valid, and in full Force.

And the only Relief we pray is merely against Lord Baltimore, and upon the Foot of that Agreement, and under the same, and to have the same carried into Execution, and to have Costs for the Non-Execution.

It's very true that, to entitle us to the Aid of this Court to enforce this Agreement, we have shewn that we have given the Defendant a *Confederation*.—And that is a Matter which cannot be shewn without entring, incidentally, into the original Rights of the two Parties, both claiming under several and respective Grants from the Crown; but this is done merely to shew that we have given, either what we had a clear and absolute Right, or at least what we had a probable Right to, unto my Lord Baltimore, as a *Confederation*, thereby to shew that our Agreement is such an One as a Court of Equity ought to affit, and to enforce the Execution of.

But, not with a View to gain any Determination as upon the mere original Right, itself; the Defendant (who in the Close of his Answer submits whether the Attorney-General should not be a Party) has, over and over again, in divers Parts of his own Answer, shewn that he himself understands our Bill in this very light, as merely seeking a specific Performance of the Agreement.

For, fol. 12. He apprehends that all that part of our Bill, touching who was the *first Discoverer* of the Peninsula, and touching Captain Smith's Book and Map, are wholly immaterial, and no way relative to any of the Matters in Question in this Cause.

Folio 20. Is advised its wholly immaterial, as to any Question that can arise between him and the Plaintiffs, whether the said Tract of Land was, or was not, inhabited by Christians, antecedent to the Grant to his Ancestor.

Folio 124. (After the Defendant has gone through the Matter of all the Possession of the Lower Counties, by the Duke of York, and the Conquests, and Treaties, and the Grants to the Duke of York, and his Feoffments to Mr. Penn, and Mr. Penn's Entry and Possession, the Defendant says expressly, *He apprehends the original Right to the said three lower Counties cannot be drawn into Question in this Suit*, and, therefore, the Defendant apprehends, and is advised all these Parts of the Bill, relating to the Grants from the Crown, and the Duke of York, might have been very well omitted out of the Plaintiffs Bill.

Folio 163. He insists the Plaintiffs could have no Right to the three Lower Counties, by Virtue of any of the Purchases from the Indians.

And (fol. 167.) that it's not any way material, to the matters in Question between him and the Plaintiffs, whether the Indian Purchases contained the Whole, or three Fourths, or any other particular Part, of the Lower Counties.

Folio 361. He hopes the Agreement shall not be carried into Execution.

Folio 413. He himself sets forth the said Order of Council of 16 May 1735.

Folio 452. He hopes (for many pretended Reasons) that the Agreement shall not be carried into Question.

Now the Question is, whether we can make out a Case, to intitle us to carry this Agreement into Execution? And what is the Consequence one way, or other? If we do obtain such a Decree against my Lord, then, we shall be at Liberty to resort back to the Committee of Council, in Virtue of the Liberty referred to us, to supplicate his Majesty's Grace and Favour upon our Petition, to confirm our Possession and Title; and which Matter will then be in the Breast of his Majesty, and his Ministers, how far the same may be proper to be granted.

On the other hand, if we can't make out such a Case as to intitle us to a Decree against my Lord, that he shall specifically confirm his own Agreement, then, he will be at Liberty to make use of the Reservation contained in the Order, to apply to the King on his Part, upon his Petition for a Grant of these Lower Counties to himself, if his Majesty shall think fit to grant it, but which, in that Case also, will lay entirely in his Majesty's Breast.

And this, without any Determination of the original Right and Title, even as between the two contending Parties.

Much less, without determining it so as to offer to affect the Right of the Crown.

If this Bill were singly on the Foot of the Party's original Right, yet it's humbly submitted whether the Attorney-General need be a Party, even in that Case, for two Persons claiming different Rights, under different Grants from the Crown, to the self-same Tract of Land, may, it's humbly submitted, dispute each other's Right, as between them two, without any Necessity of making the Crown a Party to such a Suit, either at Law, or in Equity.

If Mr. Penn had even been ill enough advised to have brought a Bill in Equity, to have compelled the Crown to make further Assurance, in such a Case, the Attorney-General must necessarily have been made a Defendant, but it's a great doubt with Mr. Penn, whether they could have had a Decree, for Lands which lay in *America*.

Another Matter may be proper for *Confederation*, whether, as these Lands lie in *America*, this Court, upon the original Right, has any Jurisdiction, or could make any Decree against the Attorney-General, if he was a Party: and, if they cannot make a Decree against him, then, it would have been very vain to have made him a Party. I know that in *Richardson* and *Hamilton*, the Court made a Decree relating to Lands in *Pensilvania*, and set aside a Sale made to the Defendant, under an Act of Assembly there; and decreed the Possession to the Plaintiffs; but that was in a Cause, where all the Parties were here in *England*, and where the Defendant was taken up on a *Ne exeat*, and submitted to this Jurisdiction; for, tho' he pleaded his Title, and that the Lands were sold to him under a *Pensilvania* Act of Assembly, which by the Charter for *Pensilvania*, was to be a good and valid Act, unless repealed by a Privy Seal, (which it never had been, only by an Order in Council, under the Seal of the Privy Council) yet, he never pleaded to the Jurisdiction; and my Lord Chancellor *King* supposed there was Fraud in obtaining the Act of Assembly, and it also appeared, at length, by examining the Clerk of the Council, that many *Pensilvania* Acts had been repealed, since the Date of the Charter, and that all these Repeals had been made by Orders in Council only, without any Privy Seal.

But, tho' the Court might possibly not have a Jurisdiction upon the original Right, as to the Lands, yet, I hope there is no question of their Jurisdiction over the Persons of the present Parties to our Suit, who all live here, so as to decree them to perform their Agreement.

And, on this head, it may not be improper to mention that, in 1723 and 1724, when the great Opinions were taken as to the Extent of Lord Baltimore's Charter, (which you have at Folio 75, of your printed Brief) Those three Council were also askt, and gave their Opinions upon, a second Question, relating to the proper Court for determining the Controversy, as follows, *viz.*

Whether any of our Courts of Law, or Equity, can take Cognizance of this matter, or whether it can only be decided by the King in Council?

I don't apprehend this Dispute is proper to be settled in any Court, but by the King and Council.

I am of Opinion, that none of our Courts, either of Law or Equity, can take Cognizance of this Matter, but it's proper to be brought before the King in Council, where, only, it can be determined.

I conceive the Privy Council can only take Cognizance of Causes concerning the Plantations by *way of Appeal*, and that they have no original Jurisdiction, and this, being a Controversy between two Lords Proprietors, about the Boundaries of different Provinces, I don't see how it can be brought thither by *Appeal*.—Sometimes, Complaints have been made to the King in Council, where one Proprietary Government has encroached upon another, which have been referred to the Board of Trade and Plantations, and, upon their Report, Measures have been taken to adjust and settle it; and, that might be done, in this Case.—As to proceeding in the Courts of Law or Equity here.—The Courts of Law cannot hold Plea of this Matter.—But if some Point of Equity were in the Case, (which does not appear to me) the Court of Chancery might take Notice of it, and compel the Parties, being Resident within the Reach of their Process, to perform the Decree of that Court.

You will please to consider whether there is not now, since the Time the above Opinions were given in 1724, a Point of Equity in the Case, upon the Agreement entered into between the Parties for valuable Considerations in 1732?

C. Wragg.

J. Willes.

P. York.

200

THE PUNJAB AND THE CROWN

The Agreement is not void.

1. Neither from any Impossibility, or Inconvenience, to carry it now into Execution,
2. Nor yet from any Clause contained therein.

As to the first Branch. By our Bill (fol. 356.) we charge that the Articles do now subsist in full Force and Virtue, and (fol. 442.) we demand a Discovery whether the Defendant admits that the Articles do now exist and subsist in full Force and Virtue, or whether he insists that the same is absolutely void; and in case he insists that the same is void, that, then, he may set forth, minutely, exactly and particularly, why, and for what Reasons, he insists the same is void, and whether it is not as easy, and as practicable, in a proper Season of the Year, now, to run, mark, and lay out the Bound Lines agreed upon by the Articles, as it was between October 1732, and Christmas 1733, or what new Difficulties have, since the last mentioned time, arisen, to make that Work more difficult, or less practicable, now, than at that time; and how long would be necessary for Commissioners, (to proceed fairly) to run out all the Lines and Bounds puruant to the Agreement, in case no Difference or pretended Difference, in Judgment arose between them? And we pray (fol. 446.) That the Agreement may be decreed and declared to exist and subsist, and to be in full Force and Virtue, and may be decreed to be forthwith specifically performed, and to be carried into full Force and Execution, in all Points and Respects whatever. — In Answer hereto, the Defendant says (fol. 363.) Believes the Commissioners, in case no such Difference in Judgment had arose between them, might, within 4 Weeks, at a proper Season of the Year, have markt and run out the Circle and Lines mentioned in the Agreement. — Again (fol. 428.) He believes it is as easy, and practicable, in a proper Season of the Year, now, to run, mark, and lay out the Bound Lines agreed upon by the Articles, as it was between October 1732, and Christmas 1733, if the Agreement was still subsisting and in Force; but which he insists and is advised it is not, for the Reasons before and after mentioned. (Namely, the several Instances of Deceit pretended to be put upon him.) Again, at (fol. 445.) He does not admit that the Articles do now exist or subsist in full Force and Virtue, but, on the contrary, insists that the same are now absolutely void, and the Reason that he insists the same are void are as before mentioned, and from the several pretended Instances of Deceit put upon him.

So that the Defendant himself does not insist that they are naturally void, but void for Fraud, Deceit, and Imposition, in gaining the same from him in his great Ignorance. — Therefore, we are to examine, Step by Step, if there is the least Colour or Pretext for the several Instances of Deceit he mentions.

As to the second Branch, There was one single Case provided for, in the Articles themselves, which might indeed (had it ever happened in time, which it did not) have made the Articles utterly void; and that is the Case mentioned in the Proviso at the End of the 9th Clause of the Agreement (and is in fol. 68 of the printed Brief.) and, by that, if the Commissioners on either side, had not from time to time (during that Agreement) according to the Adjournments and Appointments made, attended to proceed in marking and running out the Lines, for want whereof the same could not be done within the time before limited, Then, indeed, and in such case the Agreement was to be void, and the Party whose Commissioners made such Default, was to forfeit and pay, to the other Party whose Commissioners should attend, 5000 £.

That Case cannot hereafter happen, for the whole time limited by those Articles is expired; But, has it heretofore happened? No. For the Appointment on 3d February 1732, was for Eleven; before half an Hour after Eleven Ogle, glad of an advantage as he called it, broke up the Meeting.

But, by the Defendant's own Consent, and own Appointment too, the Commissioners afterwards met again at Joppa, and many other Places, vast numbers of times, at 18 or 19 different Days, at a distance of time from each other, which abundantly purged that half Hour.

But if they had never met again, was that such a Default in meeting by reason whereof the Lines could not be run within the time? No. For every one of our Commissioners; nay, every one of the Defendant's own Commissioners that were examined, expressly swear that an Hour or two's Non-Attendance on 3d February was not any such Hindrance as prevented the Lines from being run within the time limited, but that the Cause of the Lines Not being run was the Difference in Judgment between the Commissioners.

And, sure I am, that there is no Proviso for making the Agreement void if the Commissioners on either Side should differ, or pretend to differ, in Judgment.

Addenda.

The Defendant says his Bounds extend to the 40th Degree compleat, and therefore, all Lands, within that, are his own already, and the Plaintiffs pretending to grant to him those Lands, is granting what they have no Title to.

Where then is this 40th Degree?

We interrogated him by our Bill, fol. 393. but he has neither answered to it, nor proved it.

Four, at least, of his own Witnesses, tell us of Observations they have taken, Lines they have run, Surveys that they have had, and Plots that they have made.

Yet, no Map proved or produced, at all, on the Defendant's Part, of any thing whatever.

The Duke of York possessed from 1663, to 1682.

We first took Possession 28 October 1682.

That, by virtue of Feoffment, Livery, and Seisin,

From that Hour, to this, Mr. Penn's Family have been in the constant Possession, without one Moment's Interruption, for above threescore Years.

Have improved also, and made the finest Colony in America,

Without One Shilling Expence to the Crown, or Publick, in any shape.

And this in America, where Possession, and some Improvement, was always held good for a Title.

A fortiori, such a long Possession, so great an Improvement.

His Map was most precisely true, in the very Place where he pretends 'twas false.

The Cavils are, that his own Men did not lay down some Rivers in Chesapeake Bay, on the Left Side of the Main, and at the Head of Chesapeake Bay, out of the Way, where there was no sort of Dispute.

But his Map, (for a small one) is actually the best that ever was seen;

And if People were now to take an actual Survey, at a monstrous Expence, they could not possibly make one more exact, if it was to be in that small Compass.

I N D E X.

General Description of the Map, and the Peninsula, and the Isthmus, and the Degree, and the Beginning and the End of the Bay of Delaware, and about Cape Henlopen. And General State of the Case, and Account of the written Evidence, fol. 1.

An Account of all the Maps, fol. 6.

The several Lines claimed by Lord Baltimore's Ancestors and himself, and now granted to him, fol. 6.

As to my Lord's great Ignorance, fol. 6.

As to Old Cape Henlopen, fol. 7.

As to the Circle, fol. 8.

Extracts merely as to the Plaintiff's Title to Pennsylvania, and the Lower Counties, fol. 9.

An Account of all the Indian Purchases, fol. 10.

of the Chief Governors over the Great Settlement, fol. 10.

of the Military Command in the small Settlement, fol. 10.

of the Subordinate Command at the Whorekills, fol. 11.

of the successive Times of erecting Civil Jurisdictions in the Lower Counties, respectively, fol. 11.

The Attorney-General ought not to be a Party, fol. 12.

The Agreement is not void, fol. 13.

Addenda, fol. 13.

Gift to the BRITISH MUSEUM



63